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*1715*

THE  
Law of a Justice of Peace  
*1715*  
AND  
PARISH OFFICER:

CONTAINING ALL THE  
Acts of Parliament at Large concerning them,  
AND THE  
CASES determined on those ACTS  
IN THE  
COURT OF KING'S BENCH.

To which is added,  
A Collection of PRECEDENTS revised and settled by Persons  
of Eminence in the Law; comprising a greater Variety than  
any other Work of this Kind extant.

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BY  
JOHN LORD VISCOUNT DUDLEY AND WARD,  
And T. CUNNINGHAM, ESQ.

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V O L. I.

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# INTRODUCTION,

CONTAINING,

- I. A Collection of adjudged Cases, Rules and Observations, relating to the Validity, Commencement, Continuance, Power, and Construction or Interpretation of Acts of Parliament.
  - II. An historical Account of the Reporters and principal Authors of Treatises on the Laws and Customs of *England*.
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- I. *A Collection of adjudged Cases, Rules and Observations, relating to the Validity, Commencement, Continuance, Power, and Construction or Interpretation of Acts of Parliament.*

**B**EFORE the art of printing was introduced into *England*, all statutes were, at the end of every session of parliament, transcribed on parchment, and sent to the sheriff of every county, and with them a writ from the king, commanding him to proclaim them throughout his bailiwick. After he had proclaimed them, which was usually done in his county court, the transcripts were there deposited, that any person might read or take copies of them. *2 Inst. 526, 644. 4 Inst. 26.*

But an act of parliament was, even in the ancient times, when this laudable practice prevailed, equally binding, although it had not been so proclaimed. *4 Inst. 26. 2 Inst. 526.*

No statute is good, unless it is assented to by the king and both houses of parliament. *4 Inst. 25. Bro. Parl. pl. 76. Hob. 111.*

It has been said, that a parliament may be holden without summoning the lords spiritual to it: but the better opinion is, that they ought to be summoned; because they have, by the law and custom of parliament, as good a right to sit in the house of lords as any other barons. 2 *Inst.* 585.

If the prelates, however, after having been summoned, voluntarily absented themselves, the king, lords temporal and commons, may make an act of parliament without them. 2 *Inst.* 585.

This is constantly the case where a bill is brought into parliament for attainting any offender of high treason. The lords spiritual are forbid by the canon law to be present at the passing such a bill; yet, if the act proceeds, it is valid. 2 *Inst.* 585, 586.

In like manner, where the spiritual lords, being present, refuse to give their assent to, or protest against the passing of any bill, and the act proceeds, it is good without them. 2 *Inst.* 585, 586.

Two bills being read in parliament, the one intituled (11 Ric. 2. st. 2. c. 2.) *A confirmation of the statute of provisors, and the forfeiture of him that accepteth a benefice against that statute*; the other intituled, (11 Ric. 2. st. 2. c. 3.) *The penalty of him that brings a summons, or sentence of excommunication, against any person upon the statute of provisors, and of a prelate executing it*; both which tended to restrain the authority, which was claimed by the pope, of disposing of ecclesiastical benefices within this realm; the archbishops of Canterbury and York, for the whole clergy of their provinces, made their solemn protestation in open parliament, that they would in no wise assent to any restraint of the pope's authority. These protestations were, at their request, inrolled; yet both bills were passed by the king, lords temporal and commons, and are amongst the printed statutes. 2 *Inst.* 586.

As the voices in parliament ought to be absolute, either in the affirmative or negative, if the bishops and clergy give their voices with a condition, such conditional voices are as none, and an act is good without their concurrence. 2 *Inst.* 585.

A bill was brought into parliament in the time of Henry VI. *That no man should contract or marry himself to any queen of England without special licence and assent of the king, on pain to lose all his goods and lands.* The bishops and clergy assented thereto, as far forth as the same severed not from the law of God and the church; and so as the same imported no deadly sin. This being holden as no assent, it was specially entered, that it was enacted by the king, lords temporal, and commons. 2 *Inst.* 587.

And whenever any act is so specially entered in the parliament rolls, to have been enacted by the king, lords temporal, and commons, it is not to be inferred that the prelates were not summoned to parliament: but it must be intended that they voluntarily absented themselves, or refused to give their assent to, or protested against the passing an act; or gave such voices as were *contra legem et consuetudinem parliamenti*. 2 *Inst.* 585, 587.

Many

Many ancient statutes are indeed penned in the form of charters, ordinances, commands or prohibitions from the king, without mentioning either lords or commons; and many others have only the general words, *It is provided*, or *It is ordained*, without saying by whom: but as these have constantly been received as statutes, the presumption is, that they were made by lawful authority. *Hawk. Pref. to the Stat. 1 Inst. 98.*

The difference, according to lord *Coke*, between a statute and an ordinance is, that the latter has not the assent of the king, lords and commons, but is made by only one or two of these powers. *4 Inst. 25.*

Mr. *Prynne*, in his animadversions, &c. on the 4th *Inst.* says, That there is *no* such difference, nor any difference at all between an ordinance and an act of parliament. True it is, there are sundry ordinances made by the king and his council out of parliament, for regulating abuses; or proceedings in courts of justice, the mint, monies, victuals, or other occasions (enrolled in the close and patent, not parliament-roll) like orders of the king and lords of his council at this day, that are different from acts and ordinances of parliament, which are both the same, and had the three-fold assent; as this clause in all writs for electing knights, citizens and burgesses of parliament *ad faciendum et consentiendum hiis, quæ de communi concilio regni nostri contigerint ordinari* (from which the name ordinance of parliament is derived.) The parliament rolls, and above one hundred printed acts of parliament, which call acts, ordinances, and ordinances, acts of parliament, and couple the words this act and ordinance usually together, abundantly evince this beyond contradiction. If there were any difference between them, it was this, *That an ordinance was but a temporary act*, by way of probation, which the commons might amend at their pleasure; and an act of parliament a perpetual law, which they could not alter when they pleased without the king's and lords concurrent assents, which difference is hinted in 37 *E. 3. Rot. Parl. N<sup>o</sup>. 38. Exat Abridg. p. 98.* though multitudes of printed acts refute this distinction between them; or else, that the commons petition in parliament entered in the parliament rolls, to which the king gave his royal assent, were filed by some, ordinances; and these petitions with the royal assent thereto, when made into statutes by advice of the king's judges and council, and entered in the parliament or statute-rolls, were filed statutes or acts of parliament, as the precedents of this kind in the *Exat Abridg. &c.* evidence.—The same author, in his *Irenarches Redivivus*, treats very copiously upon this subject, from page 27 to page 42. and in many places of his *Exat Abridgement of Records in the Tower*.

Where any statute is against common right and reason, or repugnant or impossible to be performed, the common law shall controul it, and adjudge it to be void. *8 Rep. 118.*

A statute contrary to natural equity, as to make a man judge in his own cause, is likewise void; for *jura naturæ sunt immutabilia*. *Hob. 87. 8 Rep. 118.*

But



But it is said in another case, where this last case is cited, that an act must be clearly contrary to natural equity; for that the judges will strain hard, rather than interpret any act of parliament void *ab initio*. 11 Rep. 63. *Foster's case*. 10 Mod. 115.

The title of an act of parliament is no part of it. 3 Rep. 33. *Hard.* 324. Lord Raym. 77. This is usually framed by the clerk of that house in which the bill first passes, and is seldom read more than once.

The custom of affixing titles to statutes did not begin till about the eleventh year of the reign of Henry the Seventh. Lord Raym. 77. *Hard.* 324.

A preamble generally contains the motives and inducements to the making of a statute; but it is no part thereof. Heretofore acts of parliament were made without preambles. 6 Mod. 62.

Things incident to an act of parliament. Wherever any thing is provided for generally by an act of parliament, all remedies and requisites thereto necessary are supplied by the common law. 1 Inst. 235. 2 Inst. 222.

If any offence is made felony by statute, it seems clear that every such statute does, by necessary consequence, subject the offender to the like attainder, forfeiture, &c. and does require the like construction, as to those who shall be accounted accessaries before or after, and to all other intents and purposes, as is incident to a felony at the common law. 1 Hawk. 305. 3 Inst. 47, 49, 50.

Misprision of felony is as well incidental to a felony by statute as to one at the common law. 1 Hale's H. P. C. 652.

When any power is given by statute, all incidents, necessary to the making it effectual, are also given: for the maxim is, *Quando lex aliquid concedit, concedere videtur et id, per quod devenitur ad illud*. 12 Rep. 130, 131. 2 Inst. 306.

Of the commencement of an act of parliament. When the king comes to meet the houses, then the parliament begins. *Per Cur.* L. Raym. Rep. 343. *Pasch.* 13 W. 3. *Birt qui tam*, &c. v. Rothwell.

Every statute begins to have effect, unless a time for its commencement is therein mentioned, from the first day of that session of parliament in which it is made. 1 Rol. Abr. 465. *Bro. Relat.* pl. 35. *Bro. Parl.* pl. 86. 4 Inst. 25, 27. *Hob.* 309. *Sid.* 310.

But wherever a particular day, to which it shall extend, is appointed by an act of parliament, its relation shall be confined to that day. L. Raym. 371. *Plowd.* 79. *Bro. Parl.* pl. 86. *Hob.* 222.

If two acts are made in the same session of parliament, and no time is fixed for the commencement of either, neither shall have priority: for both have relation to the same day and instant of time; and they shall, although contained in two chapters, be construed as if they had been one and the same act of parliament. 1 Jo. 22.

It is in general true, that statutes have no retrospect beyond the time of their commencement; for the rule and law of parliament is, that *nova constitutio futuris formam debet imponere, non præteritis*. A treaty of marriage

riage being on foot, between the plaintiff and a person whom he afterwards married, and had 2000 *l.* with her as a portion, *Shooter*, who was of kin to the plaintiff, promised to give him as much, or to leave him as much by his will. This promise was made before the 24th day of *June* 1677. *Shooter* died in the *September* following, without having paid the money, or made provision by his will for the payment thereof. An action was brought against his executors, and the question made upon a special verdict was, whether this promise, it not being in writing, was within the 29 *Car. 2. c. 3.* whereby it is enacted, "That from and after the twenty-fourth day of *June*, which shall be in the year of our Lord one thousand six hundred and twenty-seven, no action shall be brought to charge any person, upon any agreement made upon consideration of marriage, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed, &c." Judgment was for the plaintiff. *Et per Cur.* It cannot be presumed that this act was to have a retrospect, so as to take away a right of action, to which the plaintiff was intitled before the 24th day *June* 1677. 2 *Mod.* 310.

But statutes do, in some cases, relate to a time antecedent to their commencement. Thus, if a person holds a farm, with condition not to alienate, and then a statute is made, which inflicts a punishment upon him for holding a farm: yet the condition remains good. 2 *Brownl.* 142.

Where *A.* covenants not to do some act or thing, which was lawful to do, and an act of parliament comes after, and compels him to it, the statute repeals the covenant: or if *A.* covenants to do a thing which is lawful, and an act of parliament comes and hinders him from doing it, the covenant is repealed. But if a man covenants not to do a thing, which then was unlawful, and an act comes and makes it lawful to do it, such act of parliament is no repeal of the covenant. 1 *Salk.* 198.

It has however been, in a later case, held, that in construing an act of parliament, made *ex post facto*, the words ought not to be strained to defeat a covenant, to the benefit whereof a party was well intitled at the time the act was made. *L. Raym.* 1352.

Statutes are either temporary or perpetual. Temporary statutes continue in force, unless repealed, till the time for which they were made expires; perpetual ones till they are repealed. Every statute, for the continuance of which no time is limited, is perpetual, although it is not expressly declared so to be. It has been laid down, that where a statute is made for seven years, and after the expiration of that term, it is by another made perpetual, the latter only is to be considered as in force. *Lit. Rep.* 213.

How long  
an act of  
parliament  
continues in  
force.

But this case does not seem to be law. The statute against perjury, made in the fifth year of the reign of queen *Elizabeth*, was only to continue in force till the end of the next parliament. Another parliament was begun in the 13th year of her reign, another in the twenty-seventh, and another in the twenty-eighth: but this act was not made perpetual till the

the twenty-ninth year of the reign of that princeſs. The firſt ſtatute has, however, been always held to be in force, and the offence of perjury is conſtantly charged, in an indiſtment, to have been committed againſt the form of that ſtatute. *Owen* 135.

In an indiſtment for perjury, in an affidavit to hold to bail, the affidavit was laid to have been taken by virtue of the 12 *Geo.* 1. c. 29. which was a temporary law for five years only, and after continued with ſome alterations by the 5 *Geo.* 2. c. 27. It was objected for the defendant, that it ought to have been laid to have been taken by virtue of the latter act, and eſpecially as it is not a bare continuance, but the firſt is in ſome reſpect altered. This objection was over-ruled; and by Lord *Hardwicke* Ch. J. When an act is continued, every body is eſtopped to ſay that it is not in force; and as there has been no alteration in this reſpect, it is but a common continuance *quoad hoc*. *Stran.* 1066.

If, before the expiration of a temporary act of parliament, another act is made to continue it for ever, the former remains in force as much as if it had been at firſt perpetual. *Lutw.* 221. *Owen* 135. *Cro. Eliz.* 750.

Divers parliaments have attempted to bar, reſtrain, ſuſpend, qualify or make void, the acts of ſubſequent parliaments: but this never could be effected; for a later parliament hath even power to abrogate, ſuſpend, qualify or make void, the acts of a former, in the whole or any part thereof, notwithſtanding any words of reſtraint or prohibition in the acts of the former. 4 *Inſt.* 43.

Some parts of *Magna Charta*, although it is expreſſly declared by the 42 *Ed.* 3. c. 3. that all ſtatutes contrary thereto ſhall be void, have been repealed or altered by ſubſequent ſtatutes; yet theſe laſt have been conſtantly held to be in force. *Jenk. Cent.* 2.

Where an act, which has been repealed, is revived, the repealing act becomes of no force. 2 *Inſt.* 686.

By the repeal of a repealing ſtatute, the firſt ſtatute is revived. 12 *Rep.* 7. 2 *Inſt.* 686.

But if an act has been repealed by three different acts, although two of theſe repealing acts are repealed, yet the third continues in force, and repeals the original act. 12 *Rep.* 7.

When a ſtatute is repealed, all acts done under it while it was in force are good; but if it is declared null, all theſe are void. *Jenk.* 233.

All ſtatutes, beſides that they may be put an end to by being in fact repealed, are likewiſe liable to a repeal by implication. Every affirmative act is a repeal, by implication, of a precedent affirmative one, ſo far as it is contrary thereto, although there are no negative words in it: for *leges poſteriores priores abrogant*. 11 *Rep.* 61. *Show.* 520. *L. Raym.* 160. 4 *Inſt.* 43.

But where a ſtatute, before perpetual, is continued by an affirmative ſtatute for a limited time, this does not amount to a repeal of it at the end of that time. *Raym.* 397.



Where two acts contradictory to each other, are passed in the same session, the latter only shall take effect. *6 Mod.* 287.

If a proviso is repugnant to the purview or enacting part of a statute, it shall stand, and be, so far as it is so, a repeal of the purview, because it was last agreed to by the makers of the law. *Fitz-Gib.* 195.

But repeals by implication are not favoured in law, nor are they allowed, except the inconsistency or repugnancy is plain: for they carry with them a reflection upon the wisdom of the legislature; and such repeals have ever been confined to the repealing as little of the preceding laws as is possible. *11 Rep.* 63. *1 Rol. Rep.* 88. *10 Mod.* 118.

Although two acts of parliament are *seemingly* repugnant; yet, if there be no clause of *non obstante* in the latter, they shall, if possible, have such a construction, that the latter may not be a repeal of the former. *Dy.* 347. *Bro. Parl. pl.* 9. *11 Rep.* 63. *Hard.* 344.

The power of an act of parliament is so exceeding great, that only the laws of God and nature can controul it.—In regard of all *civil* acceptations, an act of parliament may do any thing: as, 1st, to make a woman a mayor or justice of peace; for these are the creatures of men; but an act of parliament cannot alter the course of nature, as to make a woman a man. 2dly, It cannot do any thing out of the limits of its power, as to make a man inheritable in *France*. *2 Jo.* 12. *Per Wild, J.* in his argument in the case of *Crow v. Ramsey*.

Of the vast power of an act of parliament.

*Holt Ch. J.* Thought what Lord Coke says in *Dr. Bonham's* case, *8 Rep.* a very reasonable and true saying, That if an act of parliament should ordain that the same person should be both party and judge, or, which is the same thing, judge in his own cause, it would be a void act of parliament; and an act of parliament can do no wrong, tho' it may do several things that look pretty odd; for it may discharge one from the allegiance he lives under, and restore to the state of nature: but it cannot make one that lives under a government judge and party. *Per Holt Ch. Justice.* *12 Mod.* 687, 638. *Hil.* 13 *W.* 3. *B. R.* in the case of *The City of London v. Wood*.

So an act of parliament may not make adultery lawful, that is, it cannot make it lawful for *A.* to lie with the wife of *B.* but it may make the wife of *A.* to be wife of *B.* and dissolve her marriage with *A.* *Per Holt Ch. J.* *12 Mod.* 688. in the case of *The City of London v. Wood*.

Such statutes as relate to all the subjects of the realm are public or general ones. *8 Rep.* 138.

Of publick and private statutes.

Although the words of a statute are special; yet if the reason of it is general, it thereby becomes a general act. *10 Report* 101. *Beaufage's* case.

But wherever the intent of an act of parliament is particular, it shall, although the words of it are general, be deemed a private act. *Plew.* 204. *Stradling v. Morgan*.

All statutes that concern the king are general; for every subject has an interest in him as the head of the body politick, and must be as sensible

of any thing that affects him, as a member of the natural body is of what the head at any time feels. 4 Rep. 77. *Holland's case*. 8 Rep. 28, 138. *Hob.* 227.

The rule of law is that of general statutes, the judges ought to take notice, though they are not pleaded, otherwise it is of special or particular statutes: and for the better understanding the books in this point, and what shall be said in judgment of the law *statutum generale*, and what is *statutum speciale*: it is to be understood that *generale dicitur a genere*, & *speciale a specie*; and what are *genus*, *species*, and *individua*: Know that spirituality is *genus*, bishopric, deanery, &c. are *species*, and bishopric or deanery of *Norwich* are *individua*, *sic dicta quia in partes dividi nequeunt*. 4 Rep. 76. *a.* in a note on *Holland's case*.

This word (officer) is a word general, or *genus*, (sheriff) is a special word or *species*, and (the sheriff of *Norfolk*) is *individuum*; and therefore the statute of *Westm.* 1. cap. 26. by which it is enacted, That no sheriff nor other minister of the king shall take reward to do his office, but be paid of that which he takes of the king, is a general act, because it extends to all officers in general; but the statute of 23 H. 6. 10. which extends solely to sheriffs, is only a particular and special act, as is held 3 Mar. D. 119. 4 Rep. 76. *a. b.* in a note on *Holland's case*.

Acts of parliament concerning mysteries or trades are general acts; but an act of parliament concerning the trade of a grocer is a special act, as is said 28 H. 8. fol. 27. *Dyer*; because the trade of grocers contains under it *individua* or singular persons, as this or such a grocer by name. 4 Rep. 76. *b.* in a note on *Holland's case*. But the stat. 2 Phil. & Mar. c. 11. concerning the using the trade of a dyer, &c. not being a clothworker, &c. though it concerns a particular thing, and therefore is private in its nature; yet the forfeiture being to the king, and so the king being concerned, this has made it a publick act. *Skin.* 429. pl. 5.

The preamble of the 13 & 14 Car. 2. c. 12. recites divers mischiefs to the publick, that arise for want of proper regulations concerning the poor: and by par. 4. it is enacted, That for the redress of the mischiefs intended hereby to be remedied, a workhouse shall be erected in the county of *Middlesex*, &c. The words in this preamble were held to make that part of the act general; because it concerns the safety of the king's person, and the quiet of his government, that a stop should be put to such evils: and this clause for erecting a workhouse was also held to be general; because, as it refers to the mischiefs mentioned in the preamble, a remedy is thereby provided for them in the county of *Middlesex*.

Any act of parliament concerning the public revenue is a public law: but some clauses in it may be private, because they relate to private persons; for a statute may be general in one part, and special in another. 12 Mod. 249. *Anon.* 12 Mod. 613. 10 Rep. 57. *Plowd.* 65. *Hob.* 227. *Sid.* 24.

If a statute be of a private nature, as where it concerns a particular trade;

trade; yet if any forfeiture is given to the king, it thereby becomes a public statute. *Skin. 429. Rex v. Baggs.*

In debt on bond the defendant pleaded a certain statute for the discharge of poor prisoners, but did not set it out. Exception was taken that this statute should have been pleaded at large, because it is a private statute; for it does not extend to all poor prisoners, but to such only as were in prison at a time therein mentioned. *Per Cur.* This shall be construed to be a public act. 1st, Because all the people of *England* may be concerned as creditors to these poor prisoners. 2. It is an act of charity, and therefore ought to have a more favourable interpretation. 3. As it is a long act, and difficult to be pleaded, these poor people could never bear the expence of pleading it specially. *L. Raym. 120. Jones v. Axen.*

The judges are not obliged to take notice of an act of pardon, unless they are by such act directed so to do: for an act of pardon is not a general act; and it is no consequence, that because a man may give it in evidence upon the general issue pleaded, that therefore the judges must take notice of it in a collateral case. *L. Raym. 709. Ingram v. Foot. 12 Mod 613.*

The statute against non-residence, and that against pluralities, are public; for they extend to every species of the spirituality. *4 Rep. 120. Dumper's case. 2 Rol. Abr. 465. 4 Rep. 76.*

An act of parliament, however, that concerns only some species of the spirituality, as the bishops, or a particular bishop, is a private one. *4 Rep. 76. Holland's case. 2 Rol. Abr. 466. Cro. Jac. 112. 2 Mod. 57.*

The statute of 1 *Westm.* which says, that no sheriff or other minister of the king shall take any reward to do his office, but be satisfied with what he receives from the king, is a general law, because it extends to all officers. *4 Rep. 76. Holland's case.*

But the 23 *H. 6. c. 10.* which is confined to sheriffs, has been held to be a private act. *2 Saund. 154. Benson v. Welby, Trin. 22 Car. 2. Plowd. 65. Sid. 24, 439.*

The contrary has indeed been laid down in some cases; and in one, subsequent to the case in *Saunders*, *Holt Ch. J.* was of opinion, that this is a public statute. *2 Lev. 103. Okey v. Sell. Pasch. 26 Car. 2. 1 Lev. 83. Sid. 23.*

The former opinion is, however, more agreeable to the principle which governs in such cases; and the authorities in support of it are of much greater weight.

The act of parliament made in the time of *Henry the Sixth*, that all corporations and licences granted by that prince should be void, was held to be a private act; because, as it does not include all corporations, it is not general, but particular in a generality; or, to speak with more propriety, general in a particularity. *Plowd. 65. Dyer v. Manningham. Bro. Parl. pl. 6. 4 Rep. 76. Dy. 119.*

In many acts of parliament, which would otherwise have been private, there are clauses in the respective acts, by which they are declared to be public. 4 *Bac. Abr.* 641.

Of affirmative  
and negative  
statutes.

Some statutes are, from their being made in the affirmative, called affirmative: others obtain the name of negative statutes, because they are penned in negative terms. 4 *Bac. Abr.* 641.

It is a maxim in law, that a statute made in the affirmative, without any negative express or implied, doth not take away the common law. 2 *Inst.* 200. 1 *Inst.* 111, 115. *Show. Parl. Ca.* 64.

By the 43 *Ed.* 3. c. 11. it is enacted, "That the pannel of assize shall be arrayed four days before the day of assize;" yet if this is done two days before the day of assize, it is good; for two days were sufficient at the common law; and where a statute is, as here, in the affirmative, it does not take away the common law. *Bro. Parl. pl.* 70.

The statute of *Marlbridge*, c. 21. and the statute of 2 *Westm.* cap. 39. are, That, after complaint made to the sheriff, he may take the *posse comitatus* and make replevin. *Et per Cur.* He may serve process with power at the common law, and a statute in the affirmative is not against this. *Bro. Parl. pl.* 108.

But although an affirmative does not take away the common law, it is nevertheless binding; and a party may make his election, to proceed upon such statute, or at the common law. 2 *Inst.* 200. *Bro. Parl. pl.* 70. 1 *Rep.* 64. *Cro. Eliz.* 104.

If an affirmative statute, which is introductive of any new law, limits a thing to be done in one manner, it shall not, even where there are no negative words, be done in any other. *Plowd.* 206. *Stradling v. Morgan.* *Hob.* 298. *Sid.* 56.

But where the question was, Whether an appointment of overseers, made after the expiration of the time limited by statute for such appointment, was valid? It was held to be so. *Et per Cur.* The 43 *Eliz.* c. 2. ought to have a liberal construction, because it is an act under which provision is to be made for the poor. As it was not in the power of the parish to compel the justices to make an appointment within the time, this appointment ought *ex necessitate* to be held good. Although this statute is introductive of a new law, yet no negative ought to be implied against the meaning and justice thereof. *Str.* 1123. *Rex v. Sparrow.*

Where a power is given, by a statute introducing some new law to a certain person, by the designation of that one person, although it is an affirmative statute, all others are excluded from the exercise thereof, *quia inclusio unius est exclusio alterius.* 11 *Rep.* 64. *Foster's case.*

The designation however of a certain person, to whom some new power is given by an affirmative statute, does not always exclude another who was by a precedent statute authorized to do the same. 11 *Rep.* 64. *Foster's case.*

If an action, founded upon a statute, is directed to be brought before the justice of *Glamorgan*, in his sessions, it cannot be brought before

before any other person, or in any other place. *Plowd.* 206. *Stradling v. Morgan.*

It being by the 31 *Ed.* 3. *c.* 12. provided, “ That error in the exchequer chamber shall be amended before the chancellor and treasurer, such error cannot be amended before any other person ; and yet this is an affirmative statute. 11 *Rep.* 59. *Foster’s case.*

By the 26 *Geo.* 2. *c.* 22. for establishing the *British Museum*, some acts were directed to be done by the majority of the trustees. It was so clear, that these acts could not be done, under this statute, by the majority of the trustees present at any meeting, unless that majority was also a majority of the whole trustees, that the 27 *Geo.* 2. *c.* 16. was made, for enabling the majority of those trustees who shall be present, provided that seven are present at any meeting to do them.

By the 8 *H.* 6. *c.* 16. it is provided that, after office found, he who finds himself aggrieved may, within a month, offer his traverse, and to take the premises to farm ; and that the chancellor, treasurer or other officer, shall demise them to him to farm until, &c. By the 1 *H.* 8. *c.* 16. liberty is given to the person aggrieved to do this at any time within the space of three months. Afterwards, the 32 *H.* 8. *cap.* 40. authorizes the master of the wards to grant a lease of the lands of a ward, or an idiot, while they remain in the hands of the crown. This last act, notwithstanding the designation of a new person, shall not take away the power granted by the former : for if, before any lease is made by the master of the wards, the chancellor or treasurer makes a lease of any such premises, the master of the wards cannot afterwards demise the same. *Stamf. Prerog.* 69. 11 *Rep.* 64.

A negative statute so binds the common law, that a man cannot afterwards use it. *Bro. Parl. pl.* 72.

At the common law, if a lord distrained for customs, services, or any other duties, when none were behind, an action of trespass lay ; but since the statute of *Marlbridge*, the words of which are, *If any, of what estate soever he be, distrain his tenant for services and customs, which he alleges to be due unto him, or for any other thing, for the which the lord of the fee hath cause to distrain, and after it is found that the same services are not due, the lord shall not therefore be punished by fine ;* it has been held that in such case no action lies. 2 *Inst.* 105. *Bro. Parl. pl.* 72.

A woman, as well as a man, might at the common law have had an appeal of the death of any of her ancestors : but a woman can now only have it in the case of her husband’s death ; for by *Magna Charta*, *c.* 34. it is declared, that “ no man shall be taken or imprisoned upon the appeal of a woman for the death of any other than of her husband.” 2 *Inst.* 68.

An affirmative statute does not take away a custom. 1 *Inst.* 111, 115.

It has been formerly laid down, that a custom is also good against a negative statute, unless some new law is thereby introduced ; for, if it is only declarative of the common law, as a man might have prescribed or  
alleged



alleged a custom against the common law, so he may against such a statute; for *consuetudo privat communem legem*. 1 *Inst.* 115.

But it has been since held, that no prescription or custom, unless it is therein saved, is good against a negative act of parliament, whether it be declaratory of an old law, or introductory of a new one. 1 *Jo.* 127. Lord *Lovelace's* case. 2 *Bulst.* 36. *Show.* 420. *Show. Parl. Ca.* 175.

Whose province it is to construe an act of parliament.

The power of construing statutes is in the judges; for they have a liberty and authority over the laws, and especially over the statute laws, to mould them according to reason and convenience, to the best and truest use. *Hob.* 346. *Sheffield v. Radcliffe.* *Plowd.* 109. 3 *Rep.* 7.

But only the judges of the temporal courts have this power. *Mar.* 90. *pl.* 148. 2 *Inst.* 614.

An ordinary cannot impose any new condition in a bond of administration, but must take it in the words of the 21 *H.* 8. c. 5. and when an action is brought upon it, the meaning of that statute, and of the condition, must be ascertained by a court of common law. *Hob.* 83. *Slawney's* case.

In a case, where a question arose, Whether a man was a bankrupt? it was insisted, that as the jury had only found facts, but had not drawn the conclusion that he was a bankrupt, the court could not do this; *sed non allocatur.* *Et per Cur.* As the jury have found the facts, the court may judge from these, whether the man is within the description of any of the bankrupt acts. 2 *Jo.* 142. *Dodsworth v. Anderson.*

It was found, by a special verdict, that the defendant had an estate of one hundred pounds a year; that he carried on the business of a poulterer; that he had a hare in his custody; and that he did sell a hare for four shillings: and one question was, whether this person was a chapman within the meaning of the 5 *Ann.* c. 14. by which it is enacted, "That if any higler, chapman, carrier, inn-keeper, victualler or alehouse-keeper, shall have in his custody, or sell any hare, pheasant, partridge, moor, heath game or growse, he shall forfeit for every such offence the sum of five pounds. 4 *Bac. Abr.* 643. cites *M.S. Rep. East.* 27 *Geo.* 2. *Searl qui tam v. Poulter.*

Upon arguing this case, it was said for the defendant, that if the word *chapman* had been there intended for a word of general signification, it would have been the last word made use of, and would not, as is done, have been inserted before the word *carrier*, and other words of a more confined signification. It was also said, that as the jury have not by this verdict found him a chapman, the court cannot now infer that he is one; and 2 *Rol. Abr.* 693. 1 *Inst.* 227. *Com.* 479. *L. Raym.* 1581. *Kel.* 78: were cited. It was answered, that the doubt in the cases cited was, whether sufficient facts were found by the jury. But here the facts of having a hare in his custody, and selling a hare, are found; and the only doubt of the jury is, what the meaning of the word *chapman* in this act of parliament is: And the case of *Sir Thomas Jones* 14<sup>o</sup>. just now mentioned, was relied on, to shew that it is the proper business of the court to construe such words as this in an act of parliament. The reply was, That

as divers acts of parliament had described a bankrupt, the court in the case in *Sir Thomas Jones* did nothing more than judge of the person within any of these descriptions: but no statute has described a chapman. The judgment, in which the court were unanimous, was for the defendant; and by *Ryder Ch. J.* the word *chapman* is in some cases, as when applied to a tradesman who becomes a bankrupt, of very general signification; but its meaning in this case must be gathered from the act itself. It is clear from the preamble, that the design of this statute is to prevent the destruction of the game by idle and profligate persons, but not to prevent all sale of game; and much less to prevent all persons, who may fall under the denomination of the word *chapman* in its larger sense, from having it in their custody. Two sorts of persons are by this act forbid to have game in their custody; the carriers of it, and such as suffer it to be eat in their houses. The word *chapman* then, as it stands between the words *bigler* and *carrier*, means only a petty chapman who, by reason of his trading up and down the country, is likely to be employed in carrying game, and could never be intended to include a poulterer.

It is the most natural and genuine exposition of an act of parliament, to construe one part of the act by another part of the same act; for that best expresseth the meaning of the makers; and such exposition is *ex verborum actus*. 1 *Inst.* 381.

When one branch of a statute is obscure, expositors accustom themselves to consider the other branches; for oftentimes the words and meaning of one clause lead to the sense of another. *Plowd.* 365. *Stowel v. Zouch.* 11 *Mod.* 161.

An act of parliament ought, upon the whole, to be so construed, that if it can be prevented, no clause, sentence or word, shall be superfluous, void or insignificant. 1 *Show.* 108. *Rose v. Berchett.* *Hard.* 344.

The title of a statute is not to be regarded in construing it, because it is no part thereof. *Hard.* 324. *L. Raym.* 77.

It is in general true, that the preamble of a statute is a key to open the mind of the makers, as to the mischiefs that are intended to be thereby remedied. *Plowd.* 309. *Howell v. Zouch.* 1 *Inst.* 79.

But this rule must not be carried so far, as to confine the more general words of an enacting clause to any particular words in the preamble; for there was a time when acts of parliament were made without preambles; and even now preambles are no more than recitals of some inconveniencies, but they do not exclude any other for which a remedy is given by the enacting clause. 8 *Mod.* 144. *Rex v. Althoes.* 6 *Mod.* 62. *Palm.* 486. 1 *Jo.* 164.

It was said by Lord *Cowper*, that he could by no means agree with the notion, that a preamble shall restrain the operation of an enacting clause; and he said, that if the preamble of the *Coventry Act* had only recited the barbarity of flitting *Coventry's* nose, and the enacting clause had been general against the cutting off a member, whereby a man is disfigured or defaced; it might with equal reason have been objected, that cutting off the lips, or putting out an eye, would not have been

Rules to be observed in the construction or interpretation of acts of parliament. Rule 1. In the construing of any part of a statute, every other part thereof must be considered.

within the act, because they are not recited in the preamble. 1 *Will.* 320; *Copeman v. Gallant*.

General words in a statute may be restrained by subsequent sentences or clauses in the same statute. 8 *Mod.* 8. *Rex v. The Bishop of Ardmagh*.

If lands are disgavelled, by act of parliament, to all intents and purposes, and made defeasible as lands at the common law, the former general words are so restrained by the more particular subsequent ones, that although the partibility of the estate, by which many families have been reduced to a low estate, is put an end to; the custom to devise is not hereby taken away; for this is a privilege at the common law, and no part of the custom of gavelkind. 1 *Lev.* 80. *Wiseman v. Cotton*.

But no preceding restraining words shall controul the general words in the enacting part of an act of parliament. 8 *Mod.* 144. *Rex v. Althoes*. *Palm.* 486. 1 *Jo.* 164.

Where a thing is given or limited by particular words in a statute, this shall not be taken away or altered by any subsequent general words. 1 *Jo.* 26. *Standon v. The University of Oxford*.

A saving in a statute which is repugnant to the purview of the statute, is void. 1 *Rep.* 47. *Alton Wood's case*. *Plowd.* 564.

The purview of an act may be qualified or restrained by a saving in it; but if the saving is destructive of the purview, it shall be void. 1 *Jo.* 339. *Rex v. Priest*. 10 *Mod.* 115.

Where the proviso in a statute is directly contrary to the purview, the proviso shall be held good, and not the purview: because it speaks the last intention of the legislators. *Fitz.* 195. *The Attorney General v. The Governors of Chelsea Water-works*.

Rule 2 Where divers statutes relate to the same thing, they must all be taken into consideration in construing any one of them.

If one act of parliament prohibits a thing to be done, and another act is after made, whereby a forfeiture is inflicted upon the person doing that thing, both these are to be considered as one act. *Plowd.* 206. *Stradling v. Morgan*.

When an action, founded upon a former statute, is given by another statute in a new case, all that was adjoined to it in the first statute is also given with it. *Bro. Waste*, pl. 68.

An act lately made shall be taken to be within the equity of one made long since; and there are in our books frequent instances of its being so held. 4 *Rep.* 4. *Vernon's case*.

If a thing which had no existence, before the making of a latter act of parliament, is within the reason of a former act, it shall be taken to be within its meaning. Lord *Raym.* 1028. Sir *William Moore's case*. 2 *Jo.* 63.

The *stat.* 13 *Eliz.* c. 10. concerning leases made by spiritual persons, being enlarged by the 14 *Eliz.* c. 11. although only the former of these is recited in the 18 *Eliz.* c. 11. the latter is by consequence also recited. 1 *Vent.* 246. *Bayly v. Murin*.

In the same case it is laid down, that there is such a connexion betwixt all the statutes concerning leases made by ecclesiastical persons, that they

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are all to be taken into the construction of any one of them. The 32 *H.* 8. *c.* 28. is not recited in the 1 *Eliz.* *c.* 19. nor in the 13 *Eliz.* *c.* 10. Yet a lease is not warranted by either of these statutes, unless it has the qualifications required by the 32 *Hen.* 8. and this course is usual in the construing of statutes made *in pari materia*.

The 22 & 23 *Car.* 2. *c.* 10. for the better settling of intestates estates, is continued with some additional clauses by the 1 *Jac.* 2. *c.* 17. It was held by Lord *Hardwicke* chancellor, that for this reason the latter must be considered, as if the former had been repealed and re-enacted by it. *Barn. Ch. Rep.* 276. *Wallis v. Hodson*.

A question arising whether justices of the peace had a power to appoint five overseers for the parish of *St. Chad* in *Shrewsbury*, it was held that they had not: And by Lord *Mansfield* Ch. J. The number of overseers was by the 29 *Eliz.* *c.* 3. to be precisely four. As this number might in some cases have been found too large, power is given by the 43 *Eliz.* *c.* 29. of appointing four, three, or two, respect being had to the greatness of the parish; but no power is given to exceed in any case the number of four. The rule of law as to a special authority is, that every thing done under the colour of it, which is not within it, is void. There is no need to insert negative words in either of these acts: Nay, since no power had been ever given to appoint five overseers, it would have been quite nugatory to have said that five shall be appointed; as the 39 *Eliz.* was undoubtedly under consideration of the legislature, when the 43 *Eliz.* was made, it ought, although long since expired, to be now taken into consideration in explaining this last: for it is a rule in the construction of statutes, that all which have relation to the same subject, notwithstanding some of them may be expired, or are not referred to, must be taken as one system, and construed consistently; and the practice has been so to do in cases of bankruptcy, church leases, and in other cases. See 1 *Bur. Rep.* 445.

Exception was taken to an indictment upon the 14 *Car.* 2. *c.* 12. against churchwardens and overseers, for not making a rate to reimburse a constable, that the statute only puts it in their power, by the word *may*, to make such a rate, but does not require the doing of it as a duty, for the omission of which they are punishable; *sed non allocatur*; for where a statute directs the doing of a thing for the sake of justice or the public good, the word *may* means the same as the word *shall*. The 23 *H.* 6. says the sheriff *may* take bail; but the construction has been, that he *shall* do this. *Salk.* 609. *Rex v. Barlow.* *Vern.* 154.

Rule 3 Words and phrases, the meaning of which in a former act of parliament have been ascertained, are, when used in a subsequent act, to be understood in the same sense.

So the statute of 21 *Hen.* 8. *c.* 13. of pluralities is, that chaplains *may* purchase licence, &c. this does not give liberty to do it or not to do it; but if they do not do it, they cannot hold two livings of 8 *l.* value. *Arg. Moor* 440. *Hil.* 38 *Eliz.* in the case of *Robins v. Gerand*.

So where the statute directs that the lord chancellor *may* grant a statute of bankruptcy. *Vern.* 154. *Pasch.* 32 *Car.* 2. *Blackwell's case*.

Every crime, which is by any statute ordained to have or undergo judgment of life or member, is a felony, although the word felony is not mentioned in the statute. *Bro. Coro.* 204. 1 *Inst.* 391. 2 *Inst.* 434. 3 *Inst.* 91. *Hob.* 293. *Haw.* 107.

But if an offence is by statute only prohibited under pain of forfeiting all that a man has; or of forfeiting body and goods; or of being at the king's will for body, land and goods; it shall amount to no more than a high misdemeanor. 1 *Inst.* 391. 3 *Inst.* 145, 146. *Hob.* 270, 293.

If an act of parliament says an offender shall be punished according to his demerits, these words import, that he shall be only punished in the ordinary course of justice by indictment. 1 *Hawk.* 107. 4 *Inst.* 171.

When a statute gives a penalty to be recovered before a justice of the peace, but prescribes no method, it ought to be by bill. *Salk.* 606. *anon.*

An information, which had been exhibited against the defendant, a father, for a penalty given by the 1 *Jac.* 1. c. 22. was quashed; and by Lord *Mansfield* Ch. J. Wherever a power is given, as is here done, by any statute, to enquire, hear and determine, it always means according to the course of the common law by a jury; and the proceeding must be by indictment. 4 *Bac. Abr.* 644. cites *MS. R. Rex v. Williams, Trinity Term 30 Geo. 2.*

Rule 4. In the construction of an act of parliament, the intention of the makers thereof must be attended to.

Such a construction ought to be put upon a statute, as may best answer that intent which the makers of it had in view; for, *qui hæret in litera hæret in cortice.* *Plowd.* 232. *William v. Barkley.* 11 *Rep.* 73.

The intent of legislators is to be collected sometimes from the cause or necessity of making an act of parliament; sometimes from words in other parts of the same act; and sometimes from foreign circumstances. When this can be discovered, it must be followed with reason and discretion, in the construction of an act, although such construction seems contrary to the letter of it. *Plowd.* 205. *Stradling v. Morgan.* *Lit. R.* 212. 11 *Mod.* 161. 1 *Show.* 491. 1 *Jo.* 105.

Great regard ought, in construing a statute, to be paid to that exposition which the sages of the law, who lived about the time or soon after it was made, have put upon it; because they were best able to judge of the intent of the makers thereof. 2 *Inst.* 11, 136, 181.

Wherever any words of an act of parliament are obscure or doubtful, the intent of the legislators is, in order to find out their meaning, to be resorted to. *Plowd.* 57. *Wimbish v. Talboys.*

Every thing, which is within the intent of the makers of a statute, is, although it be not within the letter, as strongly within the act as that which is within the intent and the letter also. *Plowd.* 366. *Zouch v. Stowell.* 10 *Rep.* 101.

By the 4 *H. 7. c. 24.* it is provided, that the right of any person, who was within the age of twenty-one years at the time of levying a fine, shall not be thereby bound: yet if a disseisee dies, leaving a wife with child, and the disseisor levies a fine, and afterwards that child is born, such child, although not within the letter of the act, because, as the age of a child

child begins only from the time of its birth, it cannot be said to have been at that time within the age of twenty-one years, is within the intent of it; and his right shall be saved. *Plowd.* 366. *Zouch v. Stowell.*

On the other hand, a thing which is within the letter of an act of parliament, is not within the act, if it is not within the intention of the makers of such act.

The statute of *Marlbridge*, cap. 4. prohibits generally the driving a distress taken in one county into another. It has however been adjudged, that, if land held of a manor lies in another county, the lord may distress upon such land, and drive the distress into the county where the manor lies; for it would be inconvenient, and a great loss to the lord, if he could not drive the distress to his manor; this case, although within the words, is not within the meaning of this act of parliament. *Plowd.* 18. *Reniger v. Fogassa.*

By the statute of *Glocester*, c. 1. it is provided, "That a disseisee shall recover damages, in a writ of entry founded upon a disseisin, against him who is found tenant after the disseisor." If a disseisor makes a feoffment by deed to three persons, and makes livery or seisin to two of them, but the third was not present, at the livery; nor ever agreed to the feoffment, nor received any of the profits; he shall not, although he is by the death of the other two tenant after the disseisor, be liable to answer damages to the disseisee; for the legislators could never intend to make him, who never assented to the wrong done to the disseisee, answerable for it. *Plowd.* 205. *Stradling v. Morgan.*

Wherever an act of parliament makes use of any term known at the common law, it shall be taken in the same sense as it was taken in at the common law. 6 *Mod.* 143. *Smith v. Harman.*

To know what the common law was before the making of any statute, whereby it may be known, whether the act be introductory of a new law, or affirmatory of the old, is the very lock and key to set open the windows of a statute. *Plowd.* 365. *Zouch v. Stowell.* 2 *Inst.* 301, 308. 3 *Rep.* 13. *Hob.* 83, 97.

In order to construe a statute truly, four things are necessary to be understood and considered: 1. What the common law was before. 2. What the defect or mischief was, for which the common law had not provided. 3. The remedy that is by the act provided for this mischief. 4. The true reason of this remedy. 5 *Rep.* 7. *Heydon's case.* 1 *Inst.* 277. 2 *Inst.* 301.

The best exposition of an act of parliament is to expound it as near to the rule and reason of the common law as may be, and by the course which that observes in cases of its own. 1 *Will.* 252. *Mills v. Williams.* *Plowd.* 365. 2 *Inst.* 148, 301. 1 *Saund.* 240. 10 *Mod.* 245.

When an act of parliament gives any thing generally, it is given subject to the controul and order of the common law. 1 *Shew.* 455. *Rex v. The Bishop of London.* *Sav.* 39. *Hard.* 62.

Rule 5. The common law is much to be regarded in the exposition of statutes.

If a new remedy is given by a statute in a particular case, this shall not be extended to alter the common law in any other than that particular case. 11 Rep. 59. *Foster's case*. Hob. 298. Cart. 36. Vaugh. 179.

The statute of 1 Westm. c. 20. *de malefactoribus in parvis et vivariis*, shall not extend to the forests; because it is in restraint of the common law, and such statutes are to be construed strictly. Bro. Parl. pl. 72. 2 Inst. 455. Vaugh. 179.

All obscure statutes ought to be construed according to the rules of the common law. Win. 86. *Hickford v. Machin*.

Rule 6. Acts  
of parliament  
are to be con-  
strued accord-  
ing to equity.

Equity is a construction made by the judges, that cases out of the letter of a statute, which are within the same mischief or cause of making the statute, shall be within the remedy that is thereby provided; and the reason thereof is, that the law-makers could not possibly set down all cases in express terms. 1 Inst. 24.

In order to form a right judgment, whether a case is within the equity of a statute, it is a good way to suppose that the law maker is present; and that you have asked him this question; Did you intend to comprehend this case? then you must give yourself such an answer as you imagine he, being an upright and reasonable man, would have given. If this be, that it is within the equity, you may safely hold it to be so; for while you do no more than he would have done, you do not act contrary to the law, but in conformity thereunto. Plowd. 466. *Eyston v. Studd*.

In some cases the letter of an act of parliament is restrained by equity, in others it is enlarged, and in others the construction is contrary to the letter.

The first of these equities is defined by *Aristotle* in this manner: *Æquitas est correctio legis generatim latae, qua parte deficit*; or, as the passage is explained by *Perionius*, *Æquitas est correctio quædam legi adhibita, quia ab ea abest aliquid præter generalem op sine exceptione comprehensionem*. Plowd. 465. *Eyston v. Studd*.

The words of 2 Westm. c. 11. are general, that all bailiffs and receivers, who in passing their accounts before auditors assigned shall be found in arrear, may be committed to the next gaol: yet if an infant bailiff or receiver be found in arrear, he shall not be committed; for he is not, by reason of his want of discretion, within the equity of this statute. Plowd. 364. *Zouch v. Howell*.

If a law is made, that whosoever does a certain thing shall be adjudged a felon, and suffer death; yet where a madman does this, he shall be excused: for as this action is not to be imputed to him, but to an involuntary ignorance brought upon him by the hand of God, he is not within the reason of the law. Plowd. 465. *Eyston v. Studd*.

But, if such prohibited thing is done by a drunken person, it is felony; and, altho' he did not when drunk know what he did, he shall, because he brought this ignorance upon himself by his own folly, suffer death; he does indeed deserve to be doubly punished; for he has been guilty of two offences, by setting an evil example, in being drunk, to others, and by

by doing the thing which the law forbids to be done. *Plowd.* 19. *Reniger v. Fogassa*.

Such actions as proceed from involuntary ignorance are, in legal phrase, said to be done *ex ignorantia*; others, which are owing to ignorance that might have been avoided, *ignoranter*. *Plowd.* 19. *Reniger v. Fogassa*.

That species of equity which enlarges the letter of a statute is thus defined: *Æquitas est verborum legis directio efficiens, cum una res solummodo legis cavetur verbis, ut omnis alia in æquali genere eisdem caveatur verbis*. *Plowd.* 467. *Eyston v. Studd*.

The words of the 13 *Ed.* 1. are, *Use yourselves circumspectly in all matters touching the Bishop of Norwich*: yet this statute, although only the Bishop of *Norwich* is named, has been constantly extended by equity to all other bishops. *Plowd.* 36. *Platt v. The Sheriff of London*.

So the remedy given by the 9 *Ed.* 3. c. 3. against executors, is extended by equity to administrators; because they are within the reason of this statute. *Plowd.* 467. *Eyston v. Studd*.

Judges have frequently expounded a statute contrary to the words thereof, for the sake of making it agree with reason and equity. *Plowd.* 109. *Fulmerston v. Steward*. *Hob.* 349

The 1 *Ed.* 2. st. 2. makes it felony, if a prisoner confined for felony breaks a prison: yet if the prison is on fire, and he breaks it in order to save his life, he shall be excused by the law of reason, although this action is contrary to the words of the act of parliament. *Plowd.* 13. *Reniger v. Fogassa*.

By 2 *Westm.* c. 12. the party acquitted upon an appeal may recover damages against all who have been abettors of the appeal: but if a son abets his mother in bringing an appeal, he shall not, altho' he acts contrary to the words of this statute, be liable to damages; for the common law and reason both say, that it is his duty to aid and abet his mother. *Plowd.* 88. *Strange v. Croker*. 2 *Inst.* 84.

But an act of parliament, which is to take away a remedy that the party has at the common law ought not to be construed by equity. 10 *Mod.* 282. *Hammond v. Webb*.

When the words of law do not extend to an inconvenience rarely happening, and do to those inconveniencies which often happen, they are not to be strained further than they reach: but that case is to be considered as a *casus omisus*; for the law regardeth *quæ frequentius accidunt*. *Vaugh.* 373. *Bole v. Horton*.

A statute shall not be expounded by equity to overthrow an estate. 3 *Leon.* 133. *Worth v. The Countess of Suffex*.

Statutes of explanation shall be construed only according to the words, and not with any equity or intendment; for there cannot be an explanation upon an explanation, as it was held in 3 *Rep.* in *Butler* and *Baker's* case; and *Jones* said it was so resolved 43 *Eliz.* in the court of wards, by the opinion of the chief justices. See *Cro. Car.* 33. pl. 6. *Pasch.* 2 *Car.* a case out of the court of wards. *Anon.* 3 *Rep.* 31. a. accordingly, by *Wray* Ch. J. in *Butler* and *Baker's* case; for if any exposition should be made against the di-

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rect letter of the exposition made by parliament, there will be no end of expositions *And. 349. S. C.* And see *Jo. 344, 345. Trin. 15 Car. B. R. James v. Tintney.*

It must be construed precisely, and no new interpretation can be made of it. *Per Hutton J. Win. 85. in case of Hickford v. Machin, cites Butler and Baker's case.—S. P. Arg. Jo. 35. in case of Godfrey v. Wade, cites S. C. of Butler and Baker.*

When one act is made explanatory of another, the court cannot carry explanation farther than is expressed in that act; but in an original statute, the court will make construction according to equity. *Per Cur. Carth. 396. Dalbury Parish v. Foston.—Comb. 410. Hill. 9 W. 3. B. R. S. C. and S. P.—S. P. Poors Settlements 89. Pl. 121. in case of the parish of Burdear v. East Woodbay.*

*Hobart Ch. J.* denied that statutes of explanation shall always be taken literally; for it is impossible that an act of parliament should provide for every inconvenience which happens. *Winch 123 Hill. 22 Jac. C. B. in case of Hilliard v. Saunders.—S. P. Per Hobart. 2 Rol. Rep. 500, 501.*

But where the statute of explanation is doubtful, it may have such exposition as shall be taken to stand with the scope and intention of the act, and which shall be reasonable. See *Jo. 35, 38, 39. Trin. 21 Jac. C. B. Godfrey v. Wade.—They are always interpreted beneficially. Arg. 3 Rep. 75. in dean and chapter of Norwich's case.*

Rule 7. Such acts of parliament as are of public concern ought to have a liberal construction.

The crown is bound by the general words of acts of parliament, made for the maintenance of religion, the advancement of learning, or the support of the poor: because such acts, in which the public are interested, must be so construed that they may be effectual. *11 Rep. 71. Magdalen College's case. Str. 517, 518, 519.*

Every word in an act of parliament shall be taken most strongly against the king. *Kelv. 198. pl. 1.*

Statutes made *pro bono publico* shall be expounded in such a manner, that they may, as far as possible, attain the end proposed. *Sti. 253, 258. Pierce v. Hopper.*

The *New River* water act was held, although only the city of *London* is therein mentioned, to extend to places adjacent; because all acts made for the conveniency of the public ought to have a liberal construction. *2 Vern. 431. New River Company v. Graves.*

But it has been held, that an act of parliament for discharging insolvent debtors ought to be construed strictly, because it gives away the right of the subject; and by *Holt Ch. J.* Let an act of parliament be ever so charitable, yet if it gives away the property of the subject, it ought not to be countenanced. *12 Mod. 513. Collady v. Pelkington.*

Rule 8. Remedial acts of parliament must be expounded liberally.

Construction must be made of a statute in suppression of the mischief, and in advancement of the remedy. *4 Inst. 381. b.*

All statutes made for the suppression of fraud, and to give a more speedy remedy for right, are to be construed liberally, because such are for the advancement of justice. *Plowd. 57. Wimbiß v. Talboys.*

It

It is the business of judges always to put such a construction upon an act of parliament, as may redress the mischief and advance the remedy, and to suppress all subtle inventions and evasions for the continuance of the mischief, and *pro privato commodo*; and to give strength and life to the cure and remedy, according to the true intent of the makers of the law, *pro bono publico*. 3 Rep. 7. *Heydon's case*. 1 Rep. 123. 11 Rep. 71. *Cro. Car.* 533.

A fine levied by a husband only, who is seised in right of his wife, is within the letter of the statute of *Gloucester*; but, as the heir was thereby barred of the inheritance of his mother by the warranty of his father, the construction has been, in order to prevent this mischief, that such a fine with warranty shall not bind the heir, unless assets descend. 1 *Inst.* 381.

By the 13 *Eliz. cap.* 10. it is enacted, "That from henceforth all leases, gifts, grants, feoffments, conveyances or estates to be made, had, done or suffered, by any master and fellows of a college, &c. to any person or persons, bodies politic or corporate, other than for the term of twenty-one years or three lives, shall be utterly void and of none effect to all intents, constructions and purposes." After the making of this statute, the master and fellows of *Magdalen College* granted certain premises by indenture to the queen, her heirs and successors, for ever, with condition that she should, before a day mentioned in the indenture, convey and assure the same, by letters patent under the great seal, to *Benedict Spinola*, a merchant of *Genoa*; and the question was, if this grant to the queen was good? or, in other words, whether the queen was bound by the general words of this statute? It was laid down, that where the crown has any prerogative, right, title or interest, this shall not be barred by the general words of an act of parliament: but that in this case, as the queen was deprived of any estate, right, title, interest or prerogative which she had in these premises, before making of this statute, she was bound thereby; and that this construction was necessary, for the preventing of subtle inventions and evasions, by which this act, made for the maintenance of religion and the advancement of arts and sciences, might be eluded. 11 Rep. 74, 75. *Magdalen College's case*.

The rules of the common law will not suffer the general words of a statute to be restrained, to the prejudice of him upon whom a penalty is to be inflicted: but there are a multitude of cases, where such general words shall be restrained in his favour. *Plowd.* 17. *Reniger v. Fegassa*. *Bro. Parl. pl.* 13. Rule 9. Penal acts of parliament are to be strictly construed.

Wherever a greater punishment is ordained by an act of parliament for a second offence, the meaning is after conviction and judgment for the first; for penal statutes are to be construed strictly; and the first appeareth to be no offence, till judgment hath been given against it. 2 *Inst.* 468.

The statute which gave attain in a plea real, being a penal statute, was never extended to a plea personal. *Bro. Parl.* 20.

All statutes that give costs are to be construed strictly; for costs are a kind of penalty. *Salk.* 205. *Cone v. Bowles*.

But

But however true it may in general be, that penal laws are to be construed strictly; yet even in these the intention of the legislature is to be regarded. 3 Rep. 7. *Heydon's case*. 8 Mod. 65.

It is declared by the 25 Ed. 3. to be treason for a servant to kill his master. A question being made upon this statute, Whether a servant who had killed his master's wife, ought to have judgment to be drawn and hanged, or only to be hanged? It was held by all the judges, that this is treason, and the judgment was, that he should be drawn and hanged: And by *Coke J.* Although statutes, which encrease a punishment beyond what it was at the common law, are penal, and ought not to be extended by equity; yet the words of these ought to be construed according to the intent of the makers of them. *Plowd.* 86. *Strange v. Croker*.

The *stat.* 7 H. 7. c. 1. and the 3 H. 8. c. 1. make the departure of a soldier from his captain, without licence, felony. A question arising whether the departure of a soldier without licence from his conductor, to whom he was delivered to be brought to the sea side, was felony? it was resolved, by nine judges against three, that it was felony; for that a conductor is a captain within the intention and meaning of these statutes; and that penal statutes, when made for the public service and good of the king and realm, may very well be taken liberally, according to the intent of the makers of them. *Cro. Jac.* 71. the soldiers case.

An offender, who had been guilty of arson, was ousted of his clergy, notwithstanding that it was not expressly taken from him by statute; and the book adds, there are many cases in our books, where penal statutes have been taken by intendment for the suppression of a mischief, the advancement of justice, and the putting a stop to crimes and heinous offences. 11 Rep. 34, 35. *Poulter's case*.

All remedial statutes, which are made for the good of the public, ought, although they are penal, to receive an equitable exposition. 2 Brown. 110, 111, 116.

Statutes that are penal to particular persons, may, if beneficial to all others, have an equitable construction; for every statute is penal to some person: yet, if the extending it by equity is more advantageous than prejudicial to the greater part of the people, it may by the rules of law be so extended. *Plowd.* 36. *Platt v. The Sheriff of London*. *Plowd.* 59. 10. Mod. 117. 2 Brown. 302. 10 Mod. 282. *Hammond v. Webb*.

It was insisted, that the statute against simony being a penal law, ought to receive no aid from a court of equity: *Sed per Wright Lord Keeper*; This court will aid remedial laws, notwithstanding they are penal, not by making them more penal, but to let them have their proper effect.

*Prec. in Chanc.* 215. *Attorney General v. Sudell*.

Divers other rules to be observed in the construction of acts of parliament.

Such an exposition is to be made of any act of parliament, as does not suffer it to be eluded. *Hob.* 97. *Moore v. Hufsey*. 3 Rep. 7. 11 Rep. 73.

All statutes are to be construed for the preventing, as much as possible, of delay. 2 Inst. 611, 614.

Acts of parliament are to be construed, that no man, who is innocent or free from injury or wrong, be punished or endamaged. 1 *Inst.* 360.

No statute shall be interpreted so as to be inconvenient, or against reason. *Cart.* 136. *Hughes v. Hughes.* 1-*Inst.* 97. 5 *Rep.* *Cawdrie's case.*

By the 12 *Car.* 2. c. 17. all parsons presented in the late times, who should conform as in that act was directed, were to be confirmed in their churches, notwithstanding any act or thing whatsoever: yet it was held, that this act did not extend to the confirming one who had been simoniacally promoted. *Sid.* 232. *Crawley v. Phillips.*

If the meaning of an act of parliament is doubtful, the consequences are to be considered in the construction thereof: but where it is plain, no consequences are to be regarded; for this would be assuming a legislative authority. 10 *Mod.* 344. *The Queen v. Simpson.*

Where the penning of a statute is dubious, long usage is a just medium to expound it by; for *jus et norma loquendi* is governed by usage, and the meaning of things spoken or written must be, as it hath constantly been received to be; but if usage hath been against the obvious meaning of an act of parliament, by the only and common acceptation of the words, then it is rather an oppression of those concerned than an exposition of the act. *Vaugh.* 169, 170. *Shepherd v. Gosnell.*

Statutes which give any new remedies shall not have a liberal construction. 2 *Sid.* 63. *Pool v. Neel.*

An act of parliament creating any new jurisdiction must be construed strictly. *Stra.* 258, 260. *Pierce v. Hopper.* 10 *R.* 75.

It was held by the court of exchequer, that the statute of 6 *Geo.* 1. cap. 21. which gives the commissioners of excise a jurisdiction to condemn in a summary way certain goods therein mentioned, shall be construed very strictly; because it breaks in upon the ancient jurisdiction of this court. *Bunb.* 106. *Warwick v. White.*

A private act of parliament, which only relates to one particular thing, is to be interpreted literally. 2 *Mod.* 67. *Threadneedle v. Lynam.*

Whosoever a statute giveth a forfeiture or penalty against him who wrongfully detaineth or dispossesseth another of his duty or interest, in that case, he that hath the wrong shall have the forfeiture or penalty, and shall have an action therefore upon the statute at the common law; for the king shall not have the forfeiture in that case; and so it was adjudged in the exchequer, upon conference with the other judges, in an information, for the treble value, for not setting out the tithes at *Iclington* in the county of *Cambridge.* 1 *Inst.* 159. 3 *Lev.* 290.

How persons guilty of disobedience to an act of parliament may be punished.

As every act of parliament made against any injury, mischief or grievance, doth impliedly give a remedy, the party injured may have an action grounded upon that act, altho' no remedy is expressly given. 2 *Inst.* 55, 74. 10 *Rep.* 75.

Wherever a statute commands or prohibits a thing for the advantage of any person, that person shall have an action upon such statute to recover satisfaction for any injury done him contrary thereto; for it would

be strange if a person could in such case have no remedy but in equity. 6 *Mod.* 26. *Anon.*

If a penalty is given by statute, but no action for the recovery of it is therein given, an action of debt will lie for such penalty. *Popb.* 175. *Welden v. Vesey.*

If any thing is prohibited by an act of parliament under a certain penalty, and this penalty, or any part of it, is given to him who will sue for it; any person, although not particularly injured by the offence, may bring an action or information *qui tam* for it. 2 *And.* 127, 128. *Agard v. Tandish.* 2 *Hawk.* 265.

But where a penalty is given by statute to be recovered in any court of record, this can only be recovered in the courts at *Westminster*; for being a penal law, it must be taken strictly, and the courts at *Westminster* are those in which the king's attorney general attends. *Salk.* 178. *Walwyn v. Smith.*

In an action upon a statute giving a penalty, against several defendants, only one penalty shall be recovered. *Cro. Eliz.* 480. *Partridge v. Naylor.*

But if a conviction be upon a statute, which gives a forfeiture, each defendant must pay the forfeiture; for the penalty in this case is not in the nature of a satisfaction to the party injured, but a punishment of the offender; and although debts are joint, crimes are several. 1 *Salk.* 182. *The Queen v. King.*

When an act of parliament commands or prohibits any thing generally, the person guilty of disobedience to it, besides being answerable in an action to the party thereby injured, is also liable to be indicted for his contempt of the law. *Cro. Eliz.* 655. *Croucher's case.* 2 *Inst.* 131, 163. 1 *Hawk.* 60.

But if the thing commanded or prohibited can only be prejudicial to one or two persons, as if it be to repair the bank of a river, for want of doing which the ground of a certain person is overflowed, no indictment lies; the remedy here being by an action upon the case. 2 *Sid.* 209. *Rex v. Pawlyn.*

So if a statute extends to all persons, but chiefly concerns disputes of a private nature, as those relating to distresses between lords and tenants, an offence against such is not indictable. 1 *Mod.* 71. *Rex v. Legbinkham.* *Ibid.* 288.

If an act of parliament only inflicts a new punishment upon the person guilty of an offence which was before punishable at the common law, such offence is still punishable, as it was before the making this act. The crime of forgery, notwithstanding the 5 *Eliz.* is at this day punishable in the same manner as it was at the common law. *Fitzg.* 66. *Rex v. Woolston.* 10 *Mod.* 337.

But an indictment against the defendant, for acting as a justice of peace, not having lands to the value of forty pounds *per ann.* was held bad; because a penalty is given; and the method of recovering of it is prescribed in the statute which prohibits this. *Et per Cur.* Where a statute appoints

appoints a penalty for the doing of a thing which was no offence before, and directs how it shall be recovered, it shall be punished by that means, and not by indictment. *Cro. Jac.* 643. *Castle's case.* *Mich.* 21 *Jac.*

Since this case it has been laid down, that if the thing commanded or prohibited by act of parliament is of a public concern, an offender may be indicted, although the offence is a new created one, and a penalty with the manner of recovering it is appointed; for that the giving other affirmative remedies shall not without the negative words, "and not otherwise," take away the general way of proceeding, which the law appoints for all offences. *1 Mod.* 34. *Crofton's case.* *Hill.* 21 *Car.* 2. *1 Vent.* 63. *Sid.* 209.

The former, is, however, the better opinion; for it seems to be now settled, that if any statute appoints a particular method of proceeding against an offender, as by commitment, action, information, &c. without mentioning an indictment, no indictment lies; because, as the other methods of proceeding are only mentioned, that by indictment seems to be impliedly excluded. *2 Hawk.* 211. *Show.* 398, 399. *Fitzg.* 47.

But it has been adjudged, that if such a statute gives a recovery by action, bill, plaint, information or otherwise, an indictment may be upon it. *2 Hawk.* 211.

By the 12 *Geo.* 1. *c.* 35. a penalty of 20 *s.* per thousand is given for burning bricks and stock bricks together; but there is in this act no appropriation of the penalty, nor any method of recovering it direct. Upon demurrer to an indictment for this offence, the court held, that this, like every unappropriated penalty, was in the nature of a debt to the crown, and suable for in a court of revenue, but that this offence was not indictable. *Stra.* 828. *Rex v. Malland.*

Whenever a statute makes any thing criminal which was not so before, an information will, although not given by express words, lie. *1 Mod.* 5. *Trey's case.*

II. *An historical Account of the Reporters and principal Authors of Treatises on the Laws and Customs of England.*

AS there are many abbreviations in this work of the names of the reporters and other authors, of which many readers may want an explanation, it hath been thought necessary to subjoin the following historical account of our reporters and principal authors of treatises on the laws and customs of *England*.

For a long time after the courts of justice were settled at *Westminster-Hall*, we find no regular collection of printed cases, judicially argued and adjudged there. The oldest collection of reports we have is that which was originally compiled, Mr. *Selden* says, by *Richard Winchedon*, who lived in the reign of *Edward II.* when the cases herein reported were adjudged. These Reports were solemnly recommended to the press by that great oracle of the law, the Lord Chief Justice *Hale*, upon occasion of the authorities cited out of them in *Sacheverel* and *Frogatt's* case, and were published by Sir *John Maynard*, serjeant at law, with the approbation of the chancellor and all the judges.

The reports of adjudged cases, which *Bracton* calls *The Judgments of the Just*, were esteemed so beneficial to the public, that some of our kings took care to transmit them to posterity; and for that purpose *Edward III.* and several of his successors in their respective reigns, appointed four able and industrious men, probably chosen out of the inns of court, to report the judicial decisions in the superior courts of justice; that those judgments, which were given there, might be established by time and usage, that similar cases might receive uniform and certain determinations; and that all the judges and justices in all the several parts of the realm might, as it were, with one mouth, in all mens actions, pronounce one and the same sentence.

The reporters, thus appointed by the state, had fixed salaries from the government as a proper reward for their labours, which have been long since published in several volumes, called, *The Year Books, and Terms or Annals of the Law*, and contained the arguments of council at the bar, and the resolutions of the judges on the bench, from first *Edward III.* to twelfth *Henry VIII.* being near two hundred years; after which time this method was discontinued. It is very remarkable that there are no memorials extant who those reporters were, not so much as the initial letters of their names; but Lord *Coke* extols their diligence, and metaphorically tells us, that if it had not been for their writings, the judgments of so many sages of the law had, with their bodies, been worn away with the worm of oblivion.

The next reporter in order of time was Mr. *Plowden* of the *Middle Temple*, who collected two volumes of cases from 2 *Edward IV.* to 22d *Elizabeth*, for his private use; but having lent his manuscript to some lawyers,

lawyers whose clerks sat up whole nights to transcribe it, designing it for the press; he therefore resolved to publish them himself.

About two years afterwards the nephews and executors of Sir *James Dyer*, chief justice of the court of Common Pleas, published his Reports, which were composed of very short notes; the business of his office not permitting the author to enlarge and correct them. But Lord Coke says, *they are less painful, but not less profitable than more elaborate works.*

About the same time Sir *John Coke*, having got Mr. *Keilway's* manuscript of law cases, committed so many of them to the press as he thought were proper to be published.

In the same year Lord Chief Justice *Coke*, having for twenty years before observed the true reasons of such matters of law wherein he was of counsel, and which were adjudged upon great and mature deliberation, published the first volume of his Reports, and afterwards consented to the printing ten volumes more, which were nineteen years in publishing. But notwithstanding the character of this great judge, his works were censured even in his life-time; for being removed from the seat of chief justice of England in Michaelmas term 14 Jac. 1. on account of a controversy that happened between him and the lord chancellor *Egerton*, a commission was granted to Sir *Henry Montague*, his immediate successor in that place, to review his Reports; some part whereof, he tells us himself, *were written in the tempest of business, and therefore he could not polish them as he desired.*

There was no report published for the space of twenty-two years after Lord *Coke's* last volume, though he encouraged the lawyers of that age to follow his example, and register in books the sayings and doings which in their time were worthy of note and observation: but none would undertake it except Sir *Henry Hobart*, his immediate successor in the common pleas, who collected a volume of cases adjudged in that court, but did not think fit to publish them in his life-time.

Soon after the death of *Charles I.* there came forth a flying squadron of reports, of which Mr. *March* led the van; but the best of that number were said to be the cases collected by justice *Croke*, and published by his son-in-law Sir *Harbottle Grimstone*, during the usurpation; in which time there were twenty-one books of Reports\* published in the names of judges, serjeants at law, prothonotaries, and other lawyers of less character.

* March	—	1648	Lane	—	—	} 1657
Tothil	—	1649	Hetley	—	—	
Cro. Car.	—	} 1651	1 Bullstrode	—	—	
Brownlow	—		Cro. Jac.	—	—	
Godbolt	—	1652	2 Bullstrode	—	—	} 1658
Goldborough	—	1653	Style	—	—	
Popham	—	} 1656	1 & 2 Leonard	—	—	
Hutton	—		Ley	—	—	
Owen	—		Bridgman	—	—	} 1659
Noy	—		3 Bullstrode	—	—	
Winch	—	1657				

Soon



## INTRODUCTION.

Soon after the restoration of *Charles II.* a check was given to further publications, by a statute prohibiting all law books to be printed without the licence of the lord chancellor or keeper, the chief justice of each court, the chief baron, or one or more of them, or of one by their appointment; which act expired in the reign of king *William*.

In conformity to this law \*, most of the Reports which were printed whilst it was in being, were licensed by the chancellor and judges; but the first part of *Anderson's Reports*, and the first Modern had not that advantage.

In the reign of *James II.* some Reports † appeared, which were approved in a very unusual manner, a year after the books themselves were published, with the bare allowance only of the judges, without certifying (as is common in such cases) *the great judgment, learning and wisdom of the author*.

After the Revolution, and during the reigns of king *William*, queen *Anne*, king *George I.* king *George II.* and his present majesty, many Reports ‡ have been published.

* Yelverton	—	—	1661	6 Mod.	—	1713
Cro. Eliz.	—	—	1661	Farresley, or 7 Mod.	—	1715
Bendloe	—	—	1663	1st and 2d Salkeld	—	1717
Latch	—	—	1663	Nelson	—	1717
Moore	—	—	1663	2 Shower	—	1720
1 Anderson	—	—	1664	Comberbach	—	1724
2 Anderson	—	—	1665	Vernon, 2 vols.	—	1726
Jones (Sir Will.)	—	—	1675	Skinner	—	1728
1 Roll	—	—	1675	Carthew	—	1728
3 Leonard	—	—	1676	8 & 9 Mod.	—	1730
2 Rolle	—	—	1677	Fitzgibbon	—	1732
Vaugh.	—	—	1678	Preced. in Chan.	—	1733
Palmer	—	—	1682	Reports in Chan.	—	1736
1 Mod.	—	—	1682	Lucas, or 10th Mod.	—	1736
1 Siderfin	—	—	1683	Cases in K. Will. and Rep. in Q. An.	—	1737
Littleton	—	—	1683	(11 & 12 Mod.) 2 vols.	—	1737
† 2 Siderfin	—	—	1684	Holt's Determ.	—	1738
Keble	—	—	1685	P. Williams, 2 vols	—	1740
Saunders, 2 vols	—	—	1686	Select Cases in Chan.	—	1740
Aleyn	—	—	1688	Barnardiston	—	1741
Carter	—	—	1688	Freeman	—	1742
Benloe	—	—	1689	Ca. Sett. and Rem.	—	1742
‡ Hardres	—	—	1693	Gilbert	—	1742
Jones (Sir Thomas)	—	—	1695	Ld. Raym. 2 vols.	—	1743
Ventris, 2 vols.	—	—	1696	Moseley	—	1744
Raymond (Sir Thomas)	—	—	1696	Comyns	—	1744
Cases in Chancery	—	—	1697	Reports in C. P.	—	1747
2 Mod.	—	—	1698	Fortescue	—	1748
3 Mod.	—	—	1700	3 Williams	—	1749
Levinz	—	—	1702	Barnes	—	1754
4 Mod.	—	—	1703	Andrews	—	1754
Lutwych, 2 vols.	—	—	1704	Strange, 2 vols.	—	1755
1 Shower	—	—	1708	Banbury	—	1755
1 Kelyng	—	—	1708	2 Kelyng	—	1764
5 Mod.	—	—	1711	Rep. in B. R. in time of Lord Hard.	—	1767
				Atkyns, 3 vols.	—	1766, 1767, 1768

What

What hath been said will suffice with respect to our reporters; the following are the names of the principal lawyers who have written on our ancient laws and customs.

*Register.* This book is in the statute of *Westm. 2. c. 4.* called *Registrum de Cancellaria*; because it containeth the forms of writs at the common law, that issue out of the chancery, *tanquam ex officina justitiæ*. There is a register of original writs, and a register of judicial writs; but when it is spoken generally of the Register, it is meant of the Register original. *Co. Lit. 16. b.* I have, says Lord Coke, in his preface to 3 *Rep.* a register of our writs original, written in the reign of king Henry the Second, containing the original writs which were long before the Conquest, and yet also remaining in force, (such excepted as have been instituted or altered by acts of parliament since that time) which is the most ancient book extant of the common law, and so ancient as the beginning thereof cannot be shewed.

*Glanvil* was a learned lawyer, and chief justice of *England* in the reign of Henry the Second. He wrote a treatise in *Latin* of the laws and customs of this realm, which is the ancientest of any extant, except the Register, touching that subject. He died in the days of *Richard I.* at the siege of *Acre*, on the coast of *Palestine*, being with him in his voyage to the *Holy Land*.

*Bracton* was renowned for his knowledge both in the common and civil laws. He lived in the reign of Henry III. and wrote a treatise on the laws and customs, and was, as some say, chief justice of *England*.

*John Britton* lived in the days of king Edward I. at whose command, and by whose authority, he wrote a treatise on the laws of this realm. The book runs in that king's name, as if it had been penned by himself, in imitation of the *Institutions*, which *Justinian* assumes to himself, tho' composed by others. Sir Edward Coke, in 4 *Rep.* 126. and 6 *Rep.* 67. says, that he wrote the book in the fifth year of Edward I. Mr. Gwyn in the preface to his reading says, that this *John Britton* was bishop of *Hereford*.

*Fleta* is a feigned name of a learned lawyer, who wrote a book of the common law of *England* and other antiquities, in the *Fleet*; and therefore termed it *Fleta*. He lived in the days of Edward II. and Edward III.

Sir John Fortescue, who was lord chancellor in the reign of Henry VI. wrote a book in commendation of our common law, intituled, *De laudibus legum Angliæ*.

The book called *Doctor and Student* was written in the reign of Henry VIII. by one *St. German*.

Accessory.



Accessory. See Principal and Accessary.

### Addition.

**A**DDITION, (*additio*) signifieth in our common law, a title given to a man, besides his christian and surname, shewing his estate, degree, mystery, trade, place of dwelling, &c. As, for example, additions of estate are *yeoman, gentleman, esquire*, and such like; additions of degree are names of dignity, as *knight, earl, marquis, duke*: And additions of mystery are, *scrivener, painter, mason, carpenter*, and all others of like nature; for mystery, is the craft, or occupation whereby a man gets his living: Additions of towns, as *London, Kingston, Chester, &c.* and where a man hath a household in two places, he shall be said to dwell in both of them; so that his addition in either shall suffice. Additions were ordained, that one might not be vexed or troubled by the outlawry of another, but that by reason of the certain additions, every person may be known, and bear his own burden. *Cowell, edit. 1727.*

It seems, that the common law in no case required any other description of a person, than by his christian name and surname, unless he were of the degree of a knight, or some higher dignity; but the names of dignity were always required, being marks of distinction imposed by publick authority, and therefore make up the very name of the person to whom they are given, and they are of two sorts; 1st, Such marks of distinction as exclude the surname, so that the persons may not seem to be of any common family; and such are the names of earls, dukes, &c. 2dly, Such marks of distinction as are also imposed by the supreme power, and parcel of the name itself, but do not exclude the surname, such as knight, baronet, &c. and these marks of distinction were always to be made use of as part of the name in all legal proceedings; and so curious was the law herein, that if a plaintiff in any action, gained a new name of dignity, hanging a writ, he made it abatable; but this inconvenience is remedied by *Stat. 1 Ed. 6. c. 7. sect. 3.* by which it is enacted, "That if any plaintiff, in any manner of action, shall be made a duke, archbishop, marquis, earl, viscount, baron, bishop, knight, justice of either bench, or serjeant at law, depending the same action, that such action for such cause shall not be abatable or abated." 2 *Inst.* 665. 2 *Roll. Abr.* 469. 1 *Show.* 392. But it hath been holden, that the dignity of baronet is not

## Addition.

within the statute, because there was no such dignity at the time of making it. 1 *Sid.* 40. *Lit. Rep.* 81. *Cro. Car.* 104.

But names of worship, such as esquire, gentleman and yeoman, since they are only names of distinction, in popular use, and not given by the publick authority of the supreme power, the law doth not count them parcel of the name, and therefore were not necessary at common law. 2 *Inst.* 666.

In the time of *Hen. 5.* it was perceived, that the christian and surname were not sufficient determinations of persons, and did not sufficiently avoid the confusion that might happen by the mistake of persons; and that an innocent person might, upon a process or execution, be distrained upon having the same name, with the real defendant; to remedy which, the following statute was made. 2 *Inst.* 670. 2 *Roll. rep.* 225.

Stat. 1 *Hen. 5.* c. 5. *Stat. 1 Hen. 5. c. 5.* [*An. Dom.* 1413. intituled,] “In which original writs, additions of the defendants names shall be put.”

“Item, it is ordained and established, that in every original writ of actions personals, appeals, and indictments, and in which the exigent shall be awarded, to the names of the defendants in such writs original, appeals and indictments, additions shall be made of their estate or degree, or mystery, and of the towns, or hamlets, or places, and counties, of the which they were, or be, or in which they be or were conversant; and, if by process upon the said original writs, appeals, or indictments, in the which the said addition shall be omitted, any utlagaries [outlawries,] be pronounced, that they be void, frustrate, and holden for none; and that before the utlagaries be pronounced, the said writs and indictments shall be abated by the exception of the party, where in the same the said additions be omitted. Provided always, that though the said writs of additions personals be not according to the records and deeds, by the surplussage of the additions aforesaid, that for that cause they be not abated; and that the clerks of the *Chancery*, under whose names such writs shall go forth written, shall not leave out or make omission of the said additions as is aforesaid, upon pain to be punished, and to make a fine to the king, by the discretion of the chancellor.”

*Every original writ*] Writ (*breve*) is the king's precept, whereby any thing is commanded to be done touching a suit or action, as the defendant or tenant to be summoned, a distress to be taken, &c. And these writs are differently divided in divers respects; some in respect of their order, or manner of granting, are termed *original*, and some *judicial*. *Original* writs are those that are sent out for the summoning of the defendant in a personal, or the tenant in a real action, before the suit begins, or rather to begin the suit: those are *judicial*, which are sent out by order of the court where the cause depends, upon occasion, after the suit begun. And the *judicial* are known from the *original* thus: the *teste* of the former bears the name of the chief justice of that court whence it issues; whereas the original in the *teste* has the name of the king, and according to the nature of the action, they are either *personal* or *real*: *Real* are either touching the possession

*possession* called *writs of entry*, or the property called *writs of right*. Cowell, edit. 1727.

If the plea be not holden upon the original, this act extendeth not to it; as in a *recordare* to remove a plaint of replevin into the *Common Pleas*, because the plea is holden upon the plaint, this act extends not to it. So in a return of rescous, though there lieth process of outlawry, yet this statute extends not to it, because this act speaketh only of writs original. 2 *Inst.* 665. Nor doth this act extend to an indictment for in-croaching on a highway; for process of outlawry lieth not in that case, but distress; and so it was ruled in the lord *Paget's* case. *Cro. Eliz.* 148.

*Actions personal*] A personal action is that which one man may have against another, by reason of any contract for money or goods, or for any offence done by him, or some other, for whose fact he is answerable. A *real* action is defined to be that, whereby a defendant claims title to have a freehold in any lands or tenements, rents or commons in fee-simple, fee-tail, or for life. Cowell, edit. 1727.

*In which the exigent shall be awarded*] *Exigent, exigenda*, is a writ that lieth where the defendant in an action personal cannot be found, nor any thing within the county whereby he may be attached or distrained; and is directed to the sheriff, to proclaim and call him five county-days one after another, charging him to appear under the pain of outlawry. This writ lieth also in an indictment of felony, where the party indicted cannot be found. It seemeth to be called *exigent*, because it *exaeteth* the party, that is, requireth his appearance to answer the law; for if he come not at the last day's proclamation, he is said to be *quinqües exaetus, five times required*, and then is outlawed. Cowell, edit. 1727.

*To the names of the defendants*] Regularly by the common law, every natural man, having no name of dignity, ought to be named in all originals, and other suits, by his christian name and surname; and *that*, before this act, sufficed; but if he had a name of inferior dignity, as knight or baronet, he ought to be named by his christian name and surname, and by the addition of his name of dignity by the common law; which is implied in the words, *to the names of the defendants*. 2 *Inst.* 665, 666.

If there be a corporation of one sole person that hath a fee-simple, and may have a writ of right, he may be named in originals, &c. by the common law, by his christian name, without any surname; for the name of his corporation is in lieu of his surname, (some say both of christian name and surname); as *John* abbot of *D.* &c. *John* bishop of *N.* but otherwise it is of a parson; for he must be named by his christian name and surname. 2 *Inst.* 666.

If it be a corporation aggregate of many able persons, as mayor and commonalty, dean and chapter, master of an hospital, and brethren, &c. the mayor, dean, or master, need not be named by his christian name; because such a corporation standeth in lieu both of the christian name and surname. 2 *Inst.* 666.

## Addition.

If a man be created by letters patent, duke, marquis, earl, viscount, or baron, the dignity is so incorporated to him, according to the state given unto him by those letters patent, that the duke, &c. by the common law might be named by his christian name, and by the name of his dignity, which standeth in lieu of his surname. And the reason thereof is, for that the king by those letters patent creates him to the state, honour, and degree of duke: and though a creation by writ hath not the same words, yet it hath the same effect. *2 Inst. 666.*

This law doth not extend to the names of plaintiffs, for they were in no mischief or danger to be mistaken, nor does it extend to real or mixed actions; because, here the possessors were impleaded who were sufficiently specified, and so no other mark of distinction is needful; besides, no man can in the process possibly be grieved, because there is no process but of distress upon the land, and no imprisonment at all in these actions. *2 Inst. 665. 6 Mod. 85.*

*Additions shall be made of their estate or degree]* As to the estate and degree required by the statute to be added, it must be observed, that estate or state is defined by the civilians the capacity of moral persons; for, as natural persons have a certain space in which their natural existence is placed, and in which they perform their natural actions; so have persons in a community, a certain state or capacity, in which they are supposed to exist, to perform their moral acts, and exercise all civil relations; and therefore, where one, who is neither by birth, office, creation, or reputation, an esquire or gentleman, is named with either of these additions; or where a gentleman, by birth, who follows husbandry or a trade, is named with the addition of the trade or husbandry, and not of gentleman; or where a peer, who has more than one name of dignity, is not named by the most noble; or where a gentleman or gentlewoman is named spinster, or a yeoman is named gentleman; and such matter is pleaded in abatement, and found for the person who pleads it, the writ shall abate. *2 Inst. 669. 2 Hawk. P. C. 185.*

The degree of a serjeant at law is certainly a good addition; and so, as is generally holden, is a degree in either university; yet a doctor in divinity may be described by the addition of clerk, as well as by that of doctor. Esquire, gentleman, yeoman, labourer, are good additions of the estate and degree of a man, but not for that of a woman. Gentlewoman, widow, single woman, wife of J. S. spinster, are good additions of the estate and degree of a woman; and, as some say, spinster is a good addition for the estate and degree of a man; but neither burghers, citizen nor servant, are good additions, as being too general. *2 Inst. 667. 2 Hawk. P. C. 187, 188.*

If several defendants, of different names, have the same addition, it is safest to repeat the addition after each name; and if a father have the same name and addition with his son, the writ against the son is abateable, unless the addition of *the younger* be added to the other additions: but if a father be a defendant, there is no need of the addition of *the elder*. *2 Hawk. P. C. 187.*

*Or mystery*] It seems agreed, that the word *mystery* includes all lawful arts, trades and occupations; and that if one, under the degree of a gentleman have divers of such arts, trades or occupations, he may be named by any of them. 2 *Inst.* 668.

The additions of this kind, which are said to be clearly good, are those of husbandman, merchant, broker, taylor, point-maker, smith, miller, carpenter, cook, brewer, baker, butcher, parish-clerk, mercer, fishmonger, dyer, schoolmaster, scrivener, and such like. 2 *Hawk. P. C.* 188. 2 *H. H. P. C.* 176.

The additions of this kind, which are said to be clearly insufficient, are those of maintainer, extortioner, thief, vagabond, heretick, common informer, and such like. 2 *Hawk. P. C.* 188.

But the following additions of this kind are said to be questionable: 1st, Farmer; which, by the better opinion, seems to be an insufficient addition; because, if any mystery be implied in the notion of it, it is that of husbandry, of which husbandman is the proper addition. 2dly, Chamberlain, butler and pantler; which are holden to be insufficient additions; because they denote only a special kind of officer or servant; and imply nothing which, in the common understanding of the words, comes under the notion of a mystery; and from this ground it seems to follow, that neither groom nor page are good additions; and yet in some of the old books they seem to have been so admitted. 3dly, Hostler; which hath been holden to be a good addition, and seems properly enough to come under the notion of a mystery; and tho' it hath been resolved, that any one who keeps an inn, may be sued by the addition of a labourer, upon the custom of the realm, for want of due care of the goods of his guests; because, whoever keeps a common inn, is in that respect liable to answer for such defects, by whatsoever addition he may be stiled; yet this does by no means prove that such person may not as well be sued by the addition of hostler, but only that he may be sued as well under any other addition. 2 *Hawk. P. C.* 188, 189.

*And of the towns or hamlets*] It is a good addition of this kind, to name the party late of such a town; in which respect this addition differs from that of the estate, degree or mystery; and it is said, that if a defendant be named of *A.* and late of *B.* it is sufficient to prove either addition. 2 *Hawk. P. C.* 189. 2 *Hal. H. P. C.* 175.

If there be two towns in a county, the one called *Great Dale*, the other *Little Dale*, and the defendant be named only of *Dale*; he may plead, that there are two *Dales* in the county, called *Great Dale* and *Little Dale*, and none without an addition; and as some say, he may plead that there is no such town as *Dale*, either in this case, or where there is but one town called *Little Dale*, and he is named of *Dale*. 2 *Hawk. P. C.* 189.

If a defendant live in a hamlet, which is so far part of a town, that those who live in it are indifferently stiled sometimes of the hamlet, and sometimes of the town; it seems to be in the election of the plaintiff to name him either of the hamlet or of the town. 2 *Hawk. P. C.* 189.

The



## Addition.

The addition of a parish, if there be two or more towns within it, is not good, but if there be but one town in the parish, the addition of parish is good; and it shall not be intended (if it be not pleaded) that there are more towns than one in the parish. 2 *Inst.* 669.

The habitation of the wife is sufficiently shewn by shewing that of the husband. 2 *Hawk. P. C.* 189.

*Or places]* These are understood of places known *out* of any town or hamlet. 2 *Inst.* 669. If a defendant live in a place known by a special name, out of a town or hamlet, he may be named of such place; but if he live in any place known within a town or hamlet, it is said to be safest to name him of the town or hamlet. 2 *Hawk.* 189, 190.

The addition of the estate, degree, or mistery, ought to be such as the defendant was of at the day of the indictment brought, or writ purchased, and not *late* of such a degree or mistery; but it is a good addition to name the defendant *late* of such a town or place, because men do often remove their habitation. And this distinction appeareth by the act itself, by reason of the word in the act, relating to the towns, hamlets, &c. *of the which they were or be.* 2 *Inst.* 670.

*That they be void, frustrate and holden for none]* This being a judgment in law, is interpreted to be made void by a writ of error, or by the plea of the party coming in upon a *capias utlagatum*; for though the words of the statute be *void*, &c. yet it is but voidable by writ of error, or plea. 2 *Inst.* 670.

*By the exception of the party]* But if the defendant, though he hath no such addition as this act requireth, appear upon process, and plead, taking no advantage thereof by exception, he hath lost the benefit of this act. 2 *Inst.* 670.

## Affray.

What is an  
affray.

AFFRAY, is derived from the *French* word *effrayer*, to *affright*, and it formerly meant no more; as where persons appeared with armour or weapons not usually worn, to the terror of others; and so is the word used in the statute of *Northampton*, 2 Ed. 3. c. 3. It is now commonly taken for a skirmish, or fighting between two or more: in our books it is many times confounded with *assault*, as appears by *Lambard*, in his *Eirenarcha*, lib. 2. c. 3. & lib. 1. c. 17. Yet, as it is there said, they differ in this, that where an assault is but a wrong to the party, an affray is a wrong to the commonwealth, and therefore both inquirable and punishable in a leet. It may be said likewise, that an assault is but of one side, but an affray is the fighting of many together: besides this signification, it may be taken for a terror wrought in the subject by an unlawful fight of violence, &c. as, if a man shew himself furnished with armour or weapons  
not

not usually worn, it may strike a fear into others unarmed; and so it is used in *Stat. 2 Ed. 3. c. 3.* 4 *Hen. 6. c. 3.* 8 *Ed. 4. c. 5.* *Cowell, edit.* 1727.

Lord *Coke* defines this word thus: "An affray is a publick offence to the terror of the king's subjects, and so called, because it affrighteth and maketh men afraid." 3 *Inst.* 158.

From this last definition it seemeth clearly to follow, that there may be an *assault*, which will not amount to an *affray*; as where it happens in a private place, out of the hearing or seeing of any, except the parties concerned, in which case it cannot be said to be to the terror of the people. 1 *Hawk. P. C.* 134.

Also, it is said, that no quarrellsome or threatening words whatsoever shall amount to an affray; and that no one can justify laying his hands on those who barely quarrel with angry words, without coming to blows; yet it seemeth that the constable may, at the request of the party threatened, carry the person who threatens to beat him before a justice, in order to find sureties. 1 *Hawk. P. C.* 135.

Also, it is certain, that it is a very high offence to challenge another, either by word or letter, to fight a duel, or to be the messenger of such a challenge; or even barely to endeavour to provoke another to send a challenge, or to fight; as by dispersing letters to that purpose, full of reflections, and insinuating a desire to fight. 1 *Hawk. P. C.* 135.

But altho', says Mr. serjeant *Hawkins*, no bare words, in the judgment of law, carry in them so much terror as to amount to an affray, yet it seems certain, that in some cases there may be an affray, where there is no actual violence; as where a man arms himself with dangerous and unusual weapons, in such a manner as will naturally cause a terror to the people; which is said to have been always an offence at the common law, and is strictly prohibited by the following statute. 1 *Hawk. P. C.* 135.

*Stat. 2 Ed. 3. c. 3.* [*A. D.* 1328. commonly called the statute of *Nor-* *thampton*, and intituled,] "No man shall come before the justices, or go or ride armed." Stat. 2 Ed. 3. c. 3. enforced by 7 Ric. 2. c. 13. 20 Ric. 2. c. 1.

"Item, it is enacted, that no man great nor small, of what condition soever he be, except the king's servants in his presence, and his ministers in executing the king's precepts, or of their office, and such as be in their company assisting them, and also upon a cry made for arms to keep the peace, and the same in such places where such acts happen, be so hardy to come before the king's justices, or other of the king's ministers doing their office, with force and arms, nor bring force in affray of the peace, nor to go nor ride armed by night nor by day, in fairs, markets, nor in the presence of the justices or other ministers, nor in any part elsewhere, upon pain to forfeit their armour to the king, and their bodies to prison at the king's pleasure. And that the king's justices in their presence, sheriffs, and other ministers in their bailiwicks, lords of franchises, and their bailiffs in the same, and mayors and bailiffs of cities and boroughs, within the same cities and boroughs, and borough-holders, constables, and wardens of the peace within their wards, shall have power to

execute this act. And that the justices assigned, at their coming down into the country, shall have power to enquire how such officers and lords have exercised their offices in this case, and to punish them whom they find, who have not done that which pertained to their office."

In the exposition of this act, the following points have been holden: 1st, That any justice of peace, or other person, who is impowered to execute this statute, may proceed thereon, either *ex officio*, or by force of a writ out of *Chancery* formed upon the statute; and that if he find any person in arms contrary to the form of the statute, he may seize the arms, and commit the offender to prison; and that he ought also to make a record of his whole proceeding, and certify the same into the *Chancery*, where he proceeds by force of the said writ, or into the *Exchequer*, where he proceeds *ex officio*. 2dly, That where a justice of peace, &c. proceeds upon the said writ, he may not only imprison those whom he shall find offending against the statute in his own view, but also those who shall be found by an inquest taken before him, to have offended in such manner in his absence; and I do not see, says Mr. serjeant *Hawkins*, why he may not do the same where he proceeds *ex officio*; for seeing the said writ hath no other foundation but the said statute, and is the most authentick explication thereof, it seemeth, that the rules therein prescribed, should be the best direction for all proceedings upon that statute. 3dly, That the undersheriff may execute the said writ, being directed to the sheriff, if it name him only by the name of his office, and not by his proper name, and do not expressly command him to act in his proper person. 4thly, That a man cannot excuse the wearing such armour in public, by alleging that such a one threatened him, and that he wears it for the safety of his person from his assault; but it hath been resolved, that no one shall incur the penalty of the said statute for assembling his neighbours and friends in his house, against those who threaten to do him any violence therein, because a man's house is as his castle. 5thly, That no wearing of arms is within the meaning of this statute, unless it be accompanied with such circumstances as are apt to terrify the people; from whence it seems clearly to follow, that persons of quality are in no danger of offending against this statute by wearing common weapons, or having their usual number of attendants with them, for their ornament or defence, in such places, and upon such occasions, in which it is the common fashion to make use of them, without causing the least suspicion of an intention to commit any act of violence or disturbance of the peace. And from the same ground it also follows, that persons armed with privy coats of mail, to the intent to defend themselves against their adversaries, are not within the meaning of this statute, because they do nothing *in terrorem populi*. 6thly, That no person is within the intention of the said statute, who arms himself to suppress rioters, rebels, or enemies, and endeavours to suppress or resist such disturbers of the peace or quiet of the realm; for persons who so arm themselves, seem to be exempted out of the general words of the said statute, by that part of the exception in the beginning thereof, which seems to allow all persons to arm themselves upon a cry made for arms to

keep

keep the peace, in such places, where such acts happen. 1 *Hawk. P. C.* 135, 136.

*In affray of the peace*] The words of the original *French* in the statutes at large are, *en affrai de la pees*; lord Coke has it *pais*, of the country, or the people, and says, that the words of the writ grounded upon this statute are, *in quorundam de populo terrorem*, as appears in *F. N. B. fo. 249.* and the Register agrees with the original. 3 *Inst.* 158.

Under this head, Mr. serjeant *Hawkins* considers, how far an affray may be suppressed by a private person; how far an affray may be suppressed by a constable; in what manner an affray may be suppressed by a justice of peace; and, in what manner the several kinds of affrays may be punished.

It seems agreed, says Mr. serjeant *Hawkins*, that any one who sees others fighting, may lawfully part them, and also stay them till the heat be over, and then deliver them to the constable, who may imprison them till they find surety for the peace; also, it is said, that any private person may stop those whom he shall see coming to join either party; and from hence, it seems clearly to follow, that if a man receive a hurt from either party in thus endeavouring to preserve the peace, he shall have his remedy by an action against him; also, upon the same ground it seems equally reasonable, that if he unavoidably happen to hurt either party, in thus doing what the law both allows and commands, he may well justify it, inasmuch as he is no way in fault; and the damage done to the other, was occasioned by a laudable intention to do him a kindness. 1 *Hawk. P. C.* 136.

How far an affray may be suppressed by a private person.

However, it seems clear, that if either party be dangerously wounded in such affray, and a stander-by, endeavouring to arrest the other, be not able to take him without hurting, or even wounding him, yet he is no way liable to be punished for the same inasmuch as he is bound under pain of fine and imprisonment, to arrest such an offender, and either detain him till it appear whether the party will live or die, or carry him before a justice of peace, by whom he is either to be bailed or committed, &c. 1 *Hawk. P. C.* 136.

As to this point, it seems agreed, says Mr. serjeant *Hawkins*, that a constable is not only impowered, as all private persons are, to part an affray which happens in his presence, but is also bound at his peril to use his best endeavours to this purpose, not only to do his utmost himself, but also to demand the assistance of others, which if they refuse to give him, they are punishable with fine and imprisonment. 1 *Hawk. P. C.* 137.

How far an affray may be suppressed by a constable.

And it is said, that if a constable see persons either actually engaged in an affray, as by striking, or offering to strike, or drawing their weapons, &c. or upon the very point of entering upon an affray, as where one shall threaten to kill, wound, or beat another, he may either carry the offender before a justice of peace, to the end that such justice may compel him to find sureties for the peace, &c. or he may imprison him of his own authority for a reasonable time, till the heat shall be over, and also afterwards detain him till he find such surety by obligation: but it seems, that he has no power to imprison such an offender in any other manner, or for any

## Affray.

other purpose; for he cannot justify the committing an affrayer to gaol till he shall be punished for his offence: and it is said, that he ought not to lay hands on those, who barely contend with hot words, without any threats of personal hurt, and that all which he can do in such case, is to command them under pain of imprisonment to avoid fighting. 1 *Hawk. P. C.* 137.

But he is so far intrusted with a power over all actual affrays, that though he himself is a sufferer by them, and therefore liable to be objected against, as likely to be partial in his own cause, yet he may suppress them; and therefore, if an assault be made upon him, he may not only defend himself, but also imprison the offender, in the same manner as if he were no way a party. 1 *Hawk. P. C.* 137.

And if an affray lie in a house, the constable may break open the door to preserve the peace; and if the affrayers fly to a house, and he follow with fresh suit, he may break open the doors to take them. 1 *Hawk. P. C.* 137.

But it is said, that a constable hath no power to arrest a man for an affray done out of his own view, without a warrant from a justice of peace, unless a felony were done or likely to be done; for it is the proper business of a constable to preserve the peace, not to punish the breach of it; nor does it follow from his having power to compel those to find sureties who break the peace in his presence, that he has the same power over those who break it in his absence, inasmuch as in such case, it is most proper to be done by those who may examine the whole circumstances of the matter upon oath, which a constable cannot do; yet it is said, that he may carry those before a justice of peace, who were arrested by such as were present at an affray, and delivered by them into his hands. 1 *Hawk. P. C.* 137.

In what manner an affray may be suppressed by a justice of peace.

As to this point, Mr. serjeant *Hawkins* says, there is no doubt, but that a justice of peace may and must do all such things to that purpose, which a private man or constable, are either enabled, or required by the law to do; but it is said, that he cannot without a warrant authorize the arrest of any person for an affray out of his view; yet it seems clear, that in such case he may make his warrant to bring the offender before him, in order to compel him to find sureties for the peace. 1 *Hawk. P. C.* 137.

Also, it seems, that a justice of peace has a greater power over one who hath dangerously wounded another in an affray, than either a private person or a constable; for there does not seem to be any good authority, that these have any power at all to take sureties of such an offender; but it seems certain, that a justice of peace has a discretionary power either to commit him or bail him, till the year and day be past; but it is said, that he ought to be very cautious how he takes bail, if the wound be dangerous; for that if the party die, and the offender appear not, he is in danger of being severely fined, if he shall appear upon the whole circumstances of the case to have been too favourable. 1 *Hawk. P. C.* 138.

In what manner the several kinds of affrays may be punished.

As to this point, it sufficiently appears, says Mr. serjeant *Hawkins*, from what hath been said, how such affrays as are accompanied with force and arms, are to be dealt with upon the statute of *Northampton*; [that is, the said

said statute 2 *Ed. 3. c. 3.* to which the stat. 20 *Ric. 2. c. 1.* adds a fine,] and therefore, says he, I shall only examine in this place, what penalties other affrays are liable unto; as to which, it may be observed, that all affrays in general are punishable by fine and imprisonment, the measure of which is to be regulated by the discretion of the judges, according to the circumstances of the case, which very much vary the nature of this crime, and in some cases make it so inconsiderable as scarce to be taken notice of; and in others, make it an offence of a very heinous nature, as in the following instances: First, An affray may receive an aggravation from the dangerous tendency thereof, as where persons coolly and deliberately engage in a duel, which cannot but be attended with the apparent danger of murder, and is not only an open defiance of the law, but carries with it a direct contempt of the justice of the nation, as putting men under a necessity of righting themselves; upon which considerations, persons convicted of barely sending a challenge, have been adjudged to pay a fine of one hundred pounds, and to be imprisoned for one month without bail, and also to make a publick acknowledgment of their offence, and to be bound to their good behaviour. Secondly, An affray may receive another aggravation from the persons against whom it is committed; as where the officers of justice are violently disturbed in the due execution of their office, as by the rescue of a person legally arrested, or the bare attempt to make such a rescue; for all the ministers of the law are under its more immediate protection. Thirdly, An affray may receive a farther aggravation from the place wherein it is committed, and upon this respect all affrays in the king's courts are severely punished, and upon the same account also, all affrays in a church or church-yard, have been always esteemed very heinous offences, as being great indignities to the Divine Majesty, to whose worship and service such places are immediately dedicated. And upon this consideration, all irreverent behaviour in these places hath been esteemed so criminal by the makers of our laws, that they have not only severely punished such disturbances in them which are punishable wherever they happen, as all actual affrays, &c. but also such, which if they happen elsewhere, are not punishable at all; as bare quarrelsome words, and even such, which would be commendable if done in another place; as arrests by virtue of legal process. 1 *Hawk, P. C.* 138, 139. See **Church and Church-yard, Publick Worship, Dissenters.**

## Alehouses.

1 Salk. 45. **B**EFORE the statute of 5 & 6 Ed. 6. c. 25. it was lawful for any one to keep an alehouse without licence; for it was a means of livelihood, which any one was free to follow; but if it was disorderly kept, it was indictable as a nuisance.

19 Hen. 7. c. 12. **Stat.** 19 Hen. 7. c. 12. [A. D. 1503.] *By this act two justices were empowered to suppress the common selling of ale and beer; but it is not printed in any edition of the statutes at large, except Rastell's, because it was altered by 5 & 6 Ed. 6. c. 25. and repealed by 21 Jac. 1. c. 28.*

5 & 6 Ed. 6. c. 25. **Stat.** 5 & 6 Ed. 6. c. 25. [A. D. 1552. intituled,] "For keepers of alehouses and tipling-houses, to be bound by recognisance."

Enforced by 1 Ja. 1. c. 9. None shall sell ale or beer without licence, and they shall be bound by recognisance. 1 Show. 398. Justices of peace may discharge common selling of ale and beer. 1 Bull. 109. 4 Mod. 144. *"Forasmuch as intolerable hurts and troubles to the commonwealth of this realm doth daily grow and increase through such abuses and disorders as are had and used in common alehouses, and other houses called tiplinghouses: (2) It is therefore enacted by the king our sovereign lord, with the assent of the lords and commons in this present parliament assembled, and by the authority of the same, that the justices of peace within every shire, city, borough, town corporate, franchise or liberty within this realm, or two of them at the least, (whereof one of them to be of the quorum) shall have full power and authority by virtue of this act, within every shire, city, borough, or town corporate, franchise and liberty, where they be justices of peace, to remove, discharge and put away common selling of ale and beer in the said common alehouses and tiplinghouses, in such town or towns, and places where they shall think meet and convenient: (3) And that none after the first day of May next coming shall be admitted or suffered to keep any common alehouse or tiplinghouse, but such as shall be thereunto admitted and allowed in the open sessions of the peace, or else by two justices of the peace, whereof the one to be of the quorum; (4) And that the said justices of the peace, or two of them, (whereof one to be of the quorum) shall take bond and surety from time to time by recognisance of such as shall be admitted and allowed hereafter to keep any common alehouse or tiplinghouse, as well for and against the using of unlawful games, as also for the using and maintenance of good order and rule to be had and used within the same, as by their discretion shall be thought necessary and convenient; (5) for making of every which recognisance, the party or parties that shall be so bound shall pay but twelve pence.*

12 d. for making the recognisance.

Recognisance must be certified at the next quarter sessions.

II. "And the said justices shall certify the same recognisance at the next quarter-sessions of the peace to be holden within the same shire, city, borough, town corporate, franchise or liberty where such alehouse or tiplinghouse shall be; (2) the same recognisance there to remain of record before the justices of peace of that shire, city, borough, town corporate, franchise

or

or liberty; (3) upon pain of forfeiture to the king for every such recognisance taken and not certified, *3 l. 6 s. 8 d.*

III. "And it is further enacted by the authority aforesaid, that the justices of peace of every shire, city, borough, town corporate, franchise and liberty where such recognisance shall be taken, shall have power and authority by this act, in their quarter-sessions of the peace, by presentment, information, or otherwise by their discretion, to enquire of all such persons as shall be admitted and allowed to keep any alehouse or tiplinghouse, and that be bound by recognisance as is aforesaid, if they or any of them have done any act or acts whereby they or any of them have forfeited the same recognisance: (2) And the said justices of every shire, and places where they be justices, shall upon every such presentment or information award process against every such person so presented or complained upon before them, to shew why he should not forfeit his recognisance; (3) and shall have power and authority by this act to hear and determine the same by all such ways and means as by their discretion shall be thought good.

IV. "And it is further enacted by the authority aforesaid, that if any person or persons, other than such as shall be hereafter admitted or allowed by the said justices, shall after the said first day of *May*, obstinately and upon his own authority, take upon him or them to keep a common alehouse or tiplinghouse, or shall contrary to the commandment of the said justices, or two of them, use commonly selling of ale and beer: that then the said justices of peace, or two of them, (whereof one to be of the *quorum*) shall for every such offence commit every such person or persons so offending to the common gaol within the said shire, city, borough, town corporate, franchise or liberty, there to remain without bail or mainprize by the space of three days; (2) and before his or their deliverance, the said justice shall take recognisance of him or them so committed, with two sureties, that he or they shall not keep any common alehouse, tiplinghouse, or use commonly selling of ale or beer, as by the discretion of the said justices shall seem convenient.

V. "And the said justices shall make certificate of every such recognisance and offence at the next quarter-sessions that shall be holden within the same shire, city, borough, town corporate, franchise or liberty where the same shall be committed or done; (2) which certificate shall be a sufficient conviction in the law of the same offence. (3) And the said justices of peace, upon the said certificate made, shall in open sessions assess the fine for every such offence at *20 s.*

"VI. Provided alway, that in such towns and places where any fair or fairs shall be kept, that for the time only of the same fair or fairs it shall be lawful for every person and persons to use common selling of ale or beer in booths, or other places there, for the relief of the king's subjects that shall repair to the same, in such *like* manner, and sort as hath been used in time passed; this act, or any thing therein contained, to the contrary notwithstanding." *4 Ja. 1. c. 4.*



1 Jac. 1. c. 9. Stat. 1 Jac. 1. c. 9. [A. D. 1603. intituled,] "An act to restrain the inordinate haunting and tipling in inns, alehouses, and other victualling-houses."

The true and principal use of inns and alehouses.

"Whereas the ancient, true and principal use of inns, alehouses, and victualling-houses, was for the receipt, relief and lodging of wayfaring people travelling from place to place, and for such supply of the wants of such people as are not able by greater quantities to make their provision of victuals, and not meant for entertainment and harbouring of lewd and idle people to spend and consume their money and their time in lewd and drunken manner:

The forfeiture of an alehouse-keeper permitting one to continue unlawful drinking in his house. 7 Jac. 1. c. 10. 1 Car. 1. c. 4. Farther provisions relating hereto. 1 Ca. 1. c. 4.

II. "Be it therefore enacted by the king's most excellent majesty, the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that if after forty days next ensuing after the end of this present session of parliament, any inn-keeper, victualler or alehouse-keeper within this realm of *England*, or the dominion of *Wales*, do permit or suffer any person or persons inhabiting and dwelling in any city, town corporate, market-town, village or hamlet within this realm of *England*, or dominion of *Wales*, where any such inn, alehouse or tipling-house is or shall be, to remain or continue drinking or tipling in the said inn, victualling-house, tipling-house or alehouse; (2) other than such as shall be invited by any traveller, and shall accompany him only during his necessary abode there; (3) and other than labouring and handicraftsmen in cities and towns corporate, and market-towns, upon the usual working-days, for one hour at dinner-time, to take their diet in an alehouse; (4) and other than labourers and workmen, which for the following of their work by the day, or by the great, in any city, town corporate, market-town or village, shall for the time of their said continuing in work there, sojourn, lodge or victual in any inn, alehouse or other victualling-house; (5) other than for urgent and necessary occasions to be allowed by two justices of peace; that then every such inn-keeper, victualler or alehouse-keeper, shall for every such offence, forfeit and lose the sum of ten shillings of current money of *England*, to the use of the poor of the parish where such offence shall be committed; (6) the same offence being viewed and seen by any mayor, bailiff or justice of peace within their several limits, or proved by the oath of two witnesses, to be taken before any mayor, bailiff, or any other head officer, or any one or more justice or justices of the peace, who by virtue of this act, shall be authorized to minister the said oath to any person or persons that can or will justify the same, being within the limits of their said commission.

One witness sufficient. 21 Jac. 1. c. 7. s. 1.

The prices of ale and beer sold in an inn or alehouse.

III. "And be it further enacted by the authority aforesaid, that if any inn-keeper, alehouse-keeper or victualler, shall at any time utter or sell less than one full ale-quart of the best beer or ale for a penny, and of the small, two quarts for one penny, that then every such inn-keeper, alehouse-keeper or victualler, shall forfeit for every such offence being duly proved

proved in manner above limited, the sum of twenty shillings of lawful money of *England*, to the use aforesaid; (2) All and every the said penalties to be levied by the constables or church-wardens of the parish or parishes where the offence or offences shall be committed, by way of distress to be taken and detained for the said forfeitures, and for default of satisfaction within six days next ensuing, the same then to be presently appraised and sold, and the surplusage or remainder over and above, to be delivered to the party of whom the distress was taken; (3) and for want of sufficient distress, the party or parties offending to be by the mayor, bailiff, or other head officer, or justice or justices aforesaid, committed to the common gaol, there to remain until the said penalty or penalties be truly paid.

IV. " And be it further enacted by the authority aforesaid, that if the constables or church-wardens do neglect their duty in levying, or do not levy the said several penalties, or in default of distress or distresses, from time to time do neglect to certify the same default of distress, by the space of twenty days then next ensuing, to the mayor, bailiff, or other head officer, or justice of peace within whose jurisdiction the offence is committed, then every person and persons so offending shall forfeit for every such default, the sum of forty shillings of current money of *England*, to the use of the poor of the parish where such offence shall be committed; (2) to be levied by way of distress of the offenders goods, by warrant from any one or more justice or justices of the peace, mayor, bailiff, or other head officer within the limits of their jurisdictions respectively, under his or their hand and seal, to be taken and detained for the said forfeitures, for the space of six days then next ensuing: Within which time if payment be not made, the same goods to be presently appraised and sold, and the surplusage and remainder over and above (if any be) to be delivered to the party of whom the distress was taken; (3) and for want of such sufficient distress, the constable, church-warden or church-wardens so offending, to be by the mayor, bailiff, or other head officer, justice or justices of peace, committed to the common gaol, there to remain until the said penalty or penalties be truly paid; (4) for all which penalties which so shall be levied by the said constables or church-wardens, they the said constables and church-wardens shall be accountable to their successors and other the parishioners, in such sort as they usually be in other church-reckonings or accounts: (5) And for all forfeitures to be levied by reason of any neglect of the constables or church-wardens, those shall be accountable, who by force of any warrant or precept do levy the same, or upon the enlargement of the persons committed, do receive the same.

The penalty of the constables or church-wardens omitting their duty.

The constable and church-warden's account.

V. " And be it further enacted, that all other laws and statutes touching inn-keepers, victuallers, and alehouse-keepers shall still remain in their former force, and be put in due execution. (2) This act to continue to the end of the first session of the next parliament.

19 H. 7.  
c. 12.  
5 & 6 Ed. 6.  
c. 25.

VI. " Provided always, and be it enacted by the authority of this present parliament, that the correction and punishment of such as shall offend against this act, or any part thereof, within either of the two universities

Made perpetual by 21 Jac. 1. c. 7.  
Offences committed within universities.

sities of this realm, or the precincts or liberties of the same, shall be done upon the offenders, and justice shall be ministred in this behalf, according to the intent and true meaning of this law, by the governors, magistrates, justices of the peace, or other principal officers of either of the same universities, to whom in other cases the administration of justice, and correction and punishment of offenders, by the laws of this realm and their several charters doth belong or appertain, and that no other within their liberties, for any matter concerning this law contrary to their several charters, do intermeddle; (2) and that all penalties and sums of money to be forfeited or lost by force of this act, within either of the universities, or the liberties or precincts of the same, shall be levied by the officers or ministers of either of the said universities, to be from time to time in that behalf appointed by the vice-chancellors thereof for the time being respectively; (3) and that all powers and authorities either of imprisonment or otherwise before given or appointed by this act, shall by the governors, magistrates and principal officers abovesaid, of either of the said universities, be duly executed and done within either of the said universities, and the liberties and precincts of the same, according to the true intent and meaning of this act."

4 Jac. 1. c. 4. **Stat. 4 Jac. 1. c. 4.** [*A. D. 1606. intituled,*] "An act to restrain the utterance of beer and ale to alehouse-keepers, and tiplers not licensed."

In what case only ale or beer may be sold to an alehouse keeper having no licence.

The abuses of alehouses intolerable. None shall sell ale or beer to an alehouse-keeper not having licence, but for the expence of his household.

In what courts the offences abovesaid shall be heard and determined.

"For the better repressing of alehouses, whereof the multitudes and abuses have been and are found intolerable, and still do and are like to increase: Be it enacted by the king's most excellent majesty, and the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that no person or persons by himself, or by any other ways or means, directly or indirectly, shall at any time after three months next after the end of this present session of parliament, sell, utter or deliver, or cause to be sold, uttered or delivered, any beer or ale, to any person or persons, or into the house or cellar of any person or persons that then shall sell or utter beer or ale, as a common tipler or alehouse-keeper, the same person not having any licence then in force to sell ale or beer, other than for the convenient use and expence of his, her, or their household only; (3) upon pain to forfeit for every barrel sold, uttered or delivered contrary to the form and true meaning of this act, the sum of six shillings eight pence, and so after that rate for a greater or lesser quantity.

II. "And be it further enacted by the authority abovesaid, that all offences to be done or committed contrary to the true meaning of this act, and all penalties abovesaid, shall be enquired of, sued for, heard and determined in the sessions of the peace for the county, city or borough, town or liberty, or in the court of record of the city, borough, town or liberty wherein such offence shall be committed, by action of debt, information, indictment or presentment, wherein no essoin, protection or wager of law shall be allowed to the defendant: (2) And the one half of all which forfeitures

forfeitures shall be to the use of the poor people inhabiting within the city, borough, hundred, town or liberty where such offences shall be committed from time, to time, and the other half thereof to him or them that will sue for the same.

III. " And to the end that the said one half of the said forfeitures above-limited to be to the use of the said poor people, may be truly imployed and bestowed upon them, according to the true meaning of this act: (2) Be it further enacted, that the sheriff, bailiff, or other officer or person that shall levy or receive any sum or sums of money forfeited and recovered according to the true meaning of this act, shall and may by virtue of this act, without further warrant, deliver the one half of the same sum and sums of money, by him or them so levied or received, to some one or more of the churchwardens and overseers of the poor of the same parish where the same offence shall be committed, to be by them and every of them, distributed and bestowed amongst the said poor people, according to the true meaning of this act, who shall likewise have authority by virtue of this act, to distribute and bestow the same accordingly.

IV. " And be it further enacted, that every sheriff, bailiff, and other officer and person which shall levy or receive any such forfeiture or forfeitures aforesaid, and shall pay over the moiety and one half thereof, according to the true meaning of this act, shall be thereof discharged against the king's majesty, his heirs and successors.

V. " And be it further enacted, that if any sheriff, bailiff, or other officer or person shall refuse to pay over the moiety and one half of the said money by him or them levied or received, or that the said churchwardens and overseers, to whom the said money shall be so paid, shall not from time to time, within convenient time, truly distribute and bestow the same to and amongst the poor people, according to the true meaning of this act, that then every person so offending shall forfeit double the value thereof, to be recovered, and imployed, as aforesaid."

**Stat. 4 Jac. 1. c. 5.** [*A. D. 1606. intituled,*] " An act for repressing the odious and loathsome sin of drunkenness."

" Whereas the loathsome and odious sin of drunkenness is of late grown into common use within this realm, being the root and foundation of many other enormous sins, as bloodshed, stabbing, murder, swearing, fornication, adultery, and such like, to the great dishonour of God, and of our nation, the overthrow of many good arts and manual trades, the disabling of divers workmen, and the general impoverishing of many good subjects, abusively waisting the good creatures of God:

II. " Be it therefore enacted by the king's most excellent majesty, the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all and every person or persons, which after forty days next following the end of this present session of parliament, shall be drunk, and of the same offence of drunkenness shall be lawfully convicted, shall for every such offence forfeit and

Who shall have forfeitures.

The poor's half of the forfeitures shall be delivered to the overseers.

The officer paying the moiety to the overseers, shall be discharged thereof.

The penalty for not distributing the money received to the poor.

4 Jac. 1. c. 5. The penalty of a drunkard, and of him that continueth drinking in an ale-house.

Drunkenness the foundation of many other sins, and the cause of several enormities.

1 Saik. 45

The forfeiture of him that is convicted of drunkenness. 7 Jac. 1. c. 10. The penalty for refusing, or being not able to pay the forfeiture. lose five shillings of lawful money of *England*, to be paid within one week next after his, her or their conviction thereof, to the hands of the churchwardens of that parish where the offence shall be committed, who shall be accountable therefore to the use of the poor of the same parish: (2) And if the said person or persons so convicted, shall refuse or neglect to pay the said forfeiture, as aforesaid, then the same shall be from time to time levied of the goods of every such person or persons so refusing or neglecting to pay the same, by warrant or precept from the same court, judge or justices before whom the same conviction shall be: (3) And if the offender or offenders be not able to pay the said sum of five shillings, then the offender or offenders shall be committed to the stocks for every offence, there to remain by the space of six hours.

The forfeiture of an inferior officer that doth neglect to do his duty.

III. " And be it further enacted by the authority aforesaid, that if any constable, or any other inferior officer of that parish or place where the offence shall be committed, to whom that shall be given in charge by the precept of any mayor, bailiff, other head officer, or or justices of the peace within their several limits, do neglect the due correction of the said offender, or the due levying of the said penalties, where distress may be had; Then every person so offending shall forfeit the sum of ten shillings of current money of *England*, to the use of the poor of the same parish or place where the offence shall be committed, to be levied by way of distress, by any other person or persons having warrant from any mayor, bailiff, or other head officer, justices of peace, or court where any such conviction shall be, and to be paid to the churchwardens, as beforelimited, who are also to account for the same to the use aforesaid.

The penalty for continuing drinking in an alehouse, &c. 7 Jac. 1. c. 10. Further provisions relating hereto. 1 Car. 1. c. 4.

1 Jac. 1. c. 9.

IV. " And be it further enacted by the authority aforesaid, that if any person or persons within this realm of *England*, or the dominion of *Wales*, shall remain or continue drinking or tipling in any inn, victualling-house or alehouse, being in the same city, town, village, or hamlet wherein the said person or persons (so remaining drinking or tipling) doth dwell and inhabit at the time of such drinking and tipling; and the same being viewed and seen by any mayor, or other head officer, justice or justices of peace within their several limits, or duly proved in such manner and form as is limited in and by one act of parliament made in the first session of this present parliament, intituled, *An act to restrain the inordinate haunting and tipling in inns, alehouses, and other victualling-houses*, unless it be in such case or cases as be tolerated or excepted in the said act; that then every person or persons so offending, shall forfeit and lose for every such offence the sum of three shillings and four pence, of current money of *England*, to the use of the poor of the parish where the said offence shall be committed, to be levied by way of distress, in such manner and form as is before appointed by this act, for the levying of the penalty of five shillings for being drunk: (2) And if it happen that any offender or offenders against the true intent of this clause or branch, being thereof lawfully convicted, be not able to pay the said forfeiture or forfeitures, then it shall and may be lawful for any mayor, bailiff or other head officer, justice or justices of peace, or court where any such conviction shall be, to punish the

the said offender or offenders by setting him, her or them in the stocks for every such offence, by the space of four hours.

V. " For the more due execution of this statute, and for the better and more due proceeding against such offenders, all offences of drunkenness, and of excess and unmeasurable drinking, (2) Be it further enacted by the authority of this present parliament, that all the offences in this act, and in the said former act mentioned, shall be from time to time diligently enquired of, and presented before the justices of assizes in their circuit, justices of the peace in their quarter or ordinary sessions, and before the mayors, bailiffs or other head officers of every city or town corporate, who have power to enquire of trespasses, riots, routs, forces, and such like offences, and in every court-leet, and thereupon such due proceeding shall be against the offender and offenders for their due conviction in that behalf, as in such like cases upon any indictment or presentment is used by the laws of the realm, or customs of the city, town or place where such presentment or indictment shall be enquired of and found.

What officers shall enquire of and punish the offences committed against this statute, and the statute of 1 Jac. 1. c. 9.

VI. " And it is further enacted by the authority aforesaid, that if any person or persons, being once lawfully convicted of the said offence of drunkenness, shall after that be again lawfully convicted of the like offence of drunkenness, that then every person and persons so secondly convicted of the said offence of drunkenness, shall be bounden with two sureties to our sovereign lord the king's majesty, his heirs and successors, in one recognizance or obligation of ten pounds, with condition, to be from thenceforth of good behaviour.

He that is the second time convicted of drunkenness, shall be bound to his good behaviour.

VII. " Be it further enacted by the authority aforesaid, that all constables, church-wardens, headboroughs, tythingmen, aleconners and sidemen, shall in their several oaths incident to their several offices, be charged in like sort to prevent the offences contrary to this statute.

What officers shall prevent the offences aforesaid.

VIII. " Provided always, that this act, or any thing therein contained, do not in any wise abridge or restrain the ecclesiastical power or jurisdiction, but that all ordinaries, and other ecclesiastical judges and officers, shall and may proceed to enquire of, censure and punish all such offenders, according to the ecclesiastical law of this realm, in such manner and form as before they lawfully might do; any thing in this act to the contrary notwithstanding.

No restraint of ecclesiastical jurisdictions.

IX. " Provided also, that when any of the offenders against the true intent of this act, or any branch or article thereof, hath been once punished or corrected for his or her offence, by any the ways and means before limited; that then the said offender shall not be afterwards punished or corrected for the same offence by any other ways or means.

There shall be but one punishment for one offence.

X. " Provided always, that this act, or any thing therein contained, shall not be prejudicial to either of the two universities of this land, but that the chancellor, masters and scholars, and the successors of them, and either of them, may as fully use and enjoy all their jurisdictions, rights, privileges and charters, as heretofore they have or might have done; any thing in this act to the contrary notwithstanding.

The liberties of the universities shall not be prejudiced.

## Alehouses.

Within what  
time an of-  
fender shall be  
presented  
The continu-  
ance of this  
act.

XI. " Provided always, that no person or persons shall be punished, impeached or molested for any offence mentioned in this statute, unless he shall be for the same offence presented, indicted or convicted within six months after such offence committed: (2) This act to continue until the end of the first session of the next parliament."

[This act is made perpetual by 21 Jac. 1. c. 7. but 21 Jac. 1. c. 28. *sect.* 1. continues it only to the end of the first session of the (then) next parliament. By the second section, however, of the said act 21 Jac. 1. c. 28. it is provided, that so much of the act 4 Jac. 1. c. 5. as by any new act made in that session of parliament (*viz.* 21 Jac. 1.) should be explained, altered, or repealed, should for so much thereof from the end of that session of parliament, stand and be in force, as by those other acts should be ordained. Now, as the said act of 4 Jac. 1. c. 5. was expressly mentioned to be *altered* by the act 21 Jac. 1. c. 7. it follows that the act 4 Jac. 1. c. 5. remains in force, notwithstanding the act 21 Jac. 1. c. 28. And it is enforced as perpetual by 1 Car. 1. c. 4.]

7 Jac. 1. c. 10. Stat. 7 Jac. 1. c. 10. [*A. D.* 1609. intituled] " An act for reformation of alehouse-keepers."

The penalty  
for an offence  
committed  
against the  
statute 4 Jac.  
1. c. 5.

" Whereas notwithstanding all former laws and provisions already made, the inordinate and extreme vice of excessive drinking and drunkenness doth more and more abound, to the great offence of almighty God, and the wastful destruction of God's good creatures, be it enacted by the authority of this present parliament, that if any person being an alehouse-keeper (after six weeks next ensuing this present session of parliament) shall be lawfully convicted for any offence or offences committed against any of the branches of two former acts of parliament made sithence the beginning of this present parliament, the one intituled, *An act to restrain the inordinate haunting and tipling in inns, alehouses, and other victualling-houses*; the other intituled, *An act against the odious and loathsome sin of drunkenness*; that then every person or persons so convicted, shall for the space of 3 years next ensuing the said conviction, be utterly disabled to keep any such alehouse."

21 Jac. 1. c. 7. Stat. 21 Jac. 1. c. 7. [*A. D.* 1623. intituled,] " An act for the better repressing of drunkenness, and restraining the inordinate haunting of inns, alehouses, and other victualling-houses."

The statutes of  
1 Jac. 1. c. 9.  
4 Jac. 1. c. 5.  
made perpe-  
tual.  
One witness  
shall be suffi-  
cient to con-  
vince a man of  
tipling and  
drunkenness.

" Whereas one statute, intituled, *An act to restrain the inordinate haunting or tipling in inns, alehouses, and other victualling-houses*, made in the first year of his highness happy reign of England; and another statute, intituled, *An act to repress the odious and loathful sin of drunkenness*, made in the fourth year of his highness reign of England, were made to continue to the end of the first session of the next parliament, and by experience have been found good and necessary laws; Be it therefore enacted, that the said statutes, with the alterations and additions hereafter expressed, shall be put in due execution, and continue for ever: (2) And whereas by the said statutes,

statutes, proof of two witnesses is required, Be it enacted, that proof of one witness from henceforth shall be allowed and taken for sufficient in that behalf: (3) And that the voluntary confession (before any such persons as by the said act are authorized to minister the oath) of any person offending either of the said statutes, shall suffice to convince the person so offending; (4) after such confession, the oath of the party so *confessing*, shall and may be taken, and be a sufficient proof against any other offending at the same time.

The oath of him that confesseth the offence, shall be a sufficient proof against any other.

II. " And be it further enacted, that if any other person or persons, wheresoever his or their habitation or abiding be, shall at any time hereafter be found upon view, or his own confession, or proof of one witness, to be tipling in any inn, alehouse or victualling-house, such person or persons shall be from henceforth adjudged and construed to be within the said statutes, as if he or they had inhabited and dwelt in the city, town corporate, market-town, village or hamlet where the said inn, alehouse or victualling-house is, or shall be, where he or they shall be so found tipling, and shall incur the like penalty, and the same to be in such sort levied and disposed, as in the said act is expressed, concerning such as there inhabit: (2) And the voluntary confession of such person or persons so offending, before such as by the said statutes are authorized to minister the oath, shall suffice to convince themselves; (3) and after such confession, the oath of such person or persons so confessing, shall and may be taken by such as by the said act have authority to minister an oath, and shall be a sufficient proof against any other offending at that time.

He that stays tipling in an inn, &c. shall incur the penalty inflicted by 4 Jac. 1. c. 5.

III. " And be it further enacted, that any justice of peace in any county, and any justice of peace or other head officer in any city or town corporate, within their limits respectively, shall from henceforth have power and authority, upon his own view, confession of the party, or proof of one witness upon oath before him, which he by virtue of this act shall have power to administer, to convict any person of the offence of drunkenness, whereby such person so convicted shall incur the forfeiture of five shillings for every such offence, and the same to be levied, or the offender otherwise punished, as in the said statute is appointed: And for the second offence, he shall become bound to the good behaviour as if he had been convicted in open sessions; any thing in the said former statute made in the fourth year of his majesty's reign to the contrary notwithstanding.

He that is convicted of drunkenness, shall forfeit 5s.

For the second offence he shall be bound to the good behaviour.

IV. " And be it further enacted, that if any person being an alehouse-keeper, or that shall at any time hereafter be an alehouse-keeper, shall at any time hereafter be lawfully convicted for any offence against any the branches of either of the said two former statutes, according to the alterations and additions therein contained, or against the true meaning of this present statute, that every person so convicted shall, for the space of three years next ensuing the said conviction, be utterly disabled to keep any such alehouse.

An alehouse-keeper offending, shall be disabled from keeping an alehouse three years after.

V. " And whereas in the said statute made in the fourth year of his said majesty's reign, intituled, *An act to repress the odious and loathsome sin of drunkenness*, constables, church-wardens, headboroughs, tithingmen, aleconners

4 Jac. 1. c. 5: constables, &c. shall be charged (on their oaths) to pre-



## Alehouses.

sent the offences committed against 1 Jac. 1. c. 9. aleconners and sidemen are appointed in the oaths incident to their offices, to be likewise charged to prevent the offences contrary to the said statute; 2) Be it enacted, that the said oath shall always hereafter be also enlarged, and extend to prevent all offences done contrary to the statute made in the first session of parliament held in the first year of his highness's reign, intituled, *An act to restrain the inordinate haunting and tipling in inns and alehouses, and other victualling-houses*, with the alterations and additions in this act contained, made in the said fourth year of his said majesty's reign, according to the alterations and additions of the same in this act expressed. 1 Car. 1. c. 4.

1 Car. 1. c. 4. Stat. 1 Car. 1. c. 4. [A. D. 1625. intituled,] "An Act for the further restraint of tipling in inns, alehouses, and other victualling-houses."

Stat. 1. Car. 1. c. 4. "Whereas in the last parliament it was enacted, that if any person or persons, wheresoever his or their habitation or abiding be, should after be found upon view, or his own confession, or proof of one witness to be tipling in any inn, alehouse, or victualling-house; such person or persons should be thenceforth adjudged and construed to be within the statutes of the first and fourth years of the late king's majesty's reign, king James of famous memory; the one intituled, *An act to restrain the inordinate haunting of tipling in inns, alehouses, and other victualling-houses*; and the other intituled, *An act to repress the odious and loathsome sin of drunkenness*, as if he or they had inhabited and dwelled in the city, town corporate, market-town, village or hamlet where the inn, alehouse or victualling-house was, or should be, where he or they should be so found tipling, should incur the like penalty, and the same to be in such sort levied and disposed, as in the said act is expressed, concerning such as there inhabit; (2) but no punishment by any or either of the said acts, or by any other statute, is inflicted upon the inn-keeper, alehouse-keeper, or victualler that permits or suffers such person or persons not there inhabiting, to tipple in his inn, alehouse or victualling-house: (3) for remedy whereof, be it enacted, that every inn-keeper, alehouse-keeper, and other victualler, that at any time after the end of this session of parliament, shall permit and suffer any person or persons not inhabiting in the city, town corporate, market-town, village or hamlet where such inn, alehouse or victualling-house is or shall be, to tipple in the said inn, alehouse or victualling-house, contrary to the true intent of any or either of the said former statutes, the said inn-keeper, alehouse-keeper and victualler so offending, shall incur the same penalty, and in such manner to be proved, levied and disposed, as in the former statute of the first year of his said late majesty's reign is appointed for permitting such to tipple as dwell in the same city, town corporate, market-town, village or hamlet.

1 Jac. 1. c. 9. Vintners and victuallers to be within this and the other statutes. II. "And be it further enacted, that the keepers of taverns, and such as do sell wine in their houses, and do also keep inns, or victualling in their houses, shall be taken to be within the said two former statutes, and also within this statute.

Stat.

**Stat. 3 Car. 1. c. 3** [*A. D. 1627. intituled,*] “An Act for the better suppressing of unlicensed alehouse-keepers.” **3 Car. 1. c. 3.**

“Whereas by an act made in the fifth year of the reign of king *Edward* the sixth of famous memory, intituled, *An act for keepers of alehouses to be bound by recognizance*, amongst other things it is enacted, that if any person or persons, other than such as should be from thenceforth admitted and allowed by the justices mentioned in the said act, should after the day in the said act limited, obstinately and upon his own authority, take upon him or them to keep a common alehouse or tippling-house, or should contrary to the commandment of the said justices, or two of them, use commonly selling of ale or beer, that then the said justices of peace, or two of them, (whereof one to be of the *quorum*) should for every such offence, commit every such person or persons so offending to the common gaol within the same shire, city, borough, town corporate, franchise or liberty, there to remain without bail or mainprise by the space of three days; (2) And before his or their deliverance, the said justices should take recognizance of him or them so committed, with two sureties that he or they should not keep any common alehouse, tippling-house, or use commonly selling of ale and beer, as by the discretion of the said justices should seem convenient: (3) and the said justices shall make certificate of every such recognizance and offence, at the next quarter-sessions that should be holden within the same shire, city, borough, town corporate, franchise or liberty where the same should be committed or done; (4) which certificate should be a sufficient conviction in law of the same offence: (5) and the said justices of peace, upon the said certificate made, should in open sessions assess the fine for every such offence, at twenty shillings, as by the said act may appear: (6) which law hath not wrought such reformation as was intended, for that the said fine of twenty shillings is seldom levied, and for that many of the said offenders, by reason of their poverty, are neither able to pay the said fine of twenty shillings, nor yet to bear their own charges of conveying them to the gaol; and moreover, do leave a great charge of wife and children upon the parishes wherein they live: in regard whereof, the constables and other officers are much discouraged in presenting them, and the offenders become obstinate and incorrigible:

II. “For remedy whereof, be it enacted by the authority of this present parliament, that if any person or persons, after forty days next ensuing the end of this present session of parliament, shall upon his own authority, not being thereunto lawfully licensed, take upon him or them, to keep a common alehouse or tippling-house, or use commonly selling of ale or beer, cyder or perry, that then every such person or persons shall for every such offence forfeit and lose the sum of twenty shillings of current money of *England*, to the use of the poor of the parish where such offence shall be committed; the same offence being viewed and seen by any mayor, bailiff, or justice of peace, or other head-officer, within their several limits, or confessed by the party so offending, or proved by the oath of two witnesses, to be taken before any mayor, bailiff, or other head officer, or

The forfeiture and punishment of him that keeps an alehouse without licence. 5 & 6 Ed. 6. c. 25.

He that keeps an alehouse, &c. without licence, shall forfeit 20s. Altered by 26 Geo. 2. c. 31. and 5 Geo. 3. c. 45.

any

The constables or church-wardens shall levy the said forfeiture to the use of the poor:

The party that is not able to pay the forfeiture shall be whipped.

The officer neglecting to punish the offender, shall be imprisoned, or pay forty shillings.

For the second and third offence the offender shall be committed to the house of correction.

any one or more justice or justices of the peace, who by virtue of this act shall be authorized to minister the said oath to any person or persons that can or will justify the same, being within the limits of their said commission: (2) The said penalty to be levied by the constables or churchwardens of the parish or parishes where the said offence shall be committed; who shall be accountable therefore to the use of the poor of the said parish, by way of distress to be taken and detained by warrant or precept from the said mayor, bailiff, justice or justices, or other head-officer, by whom the said offence shall be viewed, or before whom the same shall be confessed, or proved, as aforesaid: (3) And for default of satisfaction within three days next ensuing, the said distress to be by the said constables or church-wardens appraised and sold, and the overplus to be delivered to the party or parties offending, and this to be only for the first offence: (4) And if such offender or offenders shall not have sufficient goods and chattels, whereby the said twenty shillings may be levied by way of distress, as aforesaid, or shall not pay the said sum of twenty shillings within six days after such conviction, as aforesaid, that then the said mayor, bailiff, justice or justices, or other head-officer, before whom the said offender shall be convicted, as aforesaid, shall commit all and every the said offender or offenders to some constable or constables, or other inferior officer or officers of the city, borough, town, parish or hamlet where the offence shall be committed, or the party apprehended, to be openly whipped for the said offence, as the said justice or justices shall limit or appoint.

III. " And be it enacted by the authority aforesaid, that if any constable or inferior officer shall neglect to execute the said precept or warrant, or do refuse, or do not execute by himself, or some other to be by him appointed, upon the offender, the punishment limited by this statute, that in that case, it shall and may be lawful for the said mayor, bailiff, justice or justices of peace, or other head-officer, to commit the constable or other inferior officer so refusing, or not executing the said punishment by himself or some other, to the common gaol of the said county, city, or town corporate, there to remain without bail or mainprize, until the said offender or offenders shall be by the said constable or constables, or other inferior officer so refusing, or not executing the said punishment, or some by his or their procurement, punished or whipped, as is above limited and declared, or until he or they so neglecting or refusing, shall have paid the sum of forty shillings of lawful money of *England*, unto the use of the poor of the parish, for their said contempt.

IV. " And be it further enacted, that if the said offender or offenders being an unlicensed alehouse-keeper, shall offend in any the premises the second time, and be thereof lawfully convicted in manner and form aforesaid, that then the said mayor, bailiff, justice or justices of the peace, or other head-officer, shall commit him, her, or them unto the house of correction, there to remain for the space of one month, and be dealt withal as idle, lewd and disorderly persons: (2) And if such person or persons shall again offend, and shall be thereof convicted, as aforesaid, that then the said offender and offenders for every such offence, shall be committed unto the

the said house of correction, as aforesaid, there to remain, until by the order of the justices in their general sessions for the county, city, borough or franchise, he, she or they shall be delivered from thence.

V. " Provided always, that such offender or offenders as shall be punished by virtue of this act, shall not be punished again for the same offence by the former act made in the fifth year of king *Edward* the sixth afore-mentioned; (2) and that such offender or offenders as shall be punished by virtue of the before-mentioned act made in the fifth year of king *Edward* the sixth, shall not be punished again for the same offence by virtue of this present act, nor any thing therein contained.

VI. " Provided always, that in such towns and places where any fair or fairs shall be kept, that for the time only of the same fair or fairs, it shall be lawful for every person or persons to use common selling of ale or beer in booths, or other places there, for the relief of the king's subjects that shall repair unto the same, in such like manner and sort as hath been used and done in times past; this act, or any thing therein contained to the contrary notwithstanding."

**Stat. 2 Geo. 2. c. 28.** [*A. D.* 1729.] made, among other purposes, for better regulation of licences for common inns and alehouses.

*Seet. 11.* " And whereas many inconveniences have arisen from persons being licensed to keep inns, and common alehouses, by justices of the peace, who living remote from the places of abode of such persons, may not be truly informed as to the occasion or want of such inns or common alehouses, or the characters of the persons applying for licences to keep the same, be it therefore enacted by the authority aforesaid, that from and after the 24th day of *June* 1729, no licence shall be granted to any person to keep a common inn or alehouse, or to retail any brandy or strong waters, but at a general meeting of the justices of peace, acting in the division where the said person dwells, to be holden for that purpose, on the 1st day of *September* yearly, or within twenty days after, or at any other general meeting of the said justices, to be holden for the division wherein the said person resides; and all licences which shall, after the said 24th day of *June* 1729, be granted to the contrary hereof, shall be null and void.

*Seet. 12.* " Provided always, that nothing herein contained shall extend, or be construed to extend, to oblige persons already licensed, to take out new licences on the 1st day of *September* 1729, or within twenty days after, but that the licences already granted shall subsist and be valid, until the 1st of *September* 1730; any thing in this act contained to the contrary notwithstanding; nor shall any thing herein contained extend to alter the method or power of granting licences for keeping of common inns, alehouses or brandy-shops, in any city or town corporate."

**Stat. 26 Geo. 2. c. 13.** [*A. D.* 1753.] *seet. 12.* " It is enacted, that from and after the 24th day of *June* 1753, no justice of the peace, being a common brewer of ale or beer, innkeeper or distiller, or other feller of

tillers, victuallers or maltsters, &c. prohibited from granting licences for selling ale, &c.

or dealer in ale or any kind of spirituous liquors, or interested in any of the said trades or business, or being a victualler or maltster, shall during such time as he shall be such common brewer, innkeeper, distiller, victualler or maltster, or other feller of or dealer in ale or spirituous liquors, or interested in any of the said trades or businesses, be capable or have any power to grant any licence or licences to any person or persons whatsoever, for selling ale, beer, or any other liquors by retail; and in case any such justice or justices shall, contrary to the true intent and meaning hereof, presume to grant any such licence, the same shall be and is hereby declared to be null and void to all intents and purposes whatsoever.

26 Geo. 2.  
c. 31.

**Stat.** 26 Geo. 2. c. 31. [*A. D. 1753. intituled,*] “ An act for regulating the manner of licensing alehouses in that part of *Great Britain* called *England*; and for the more easy convicting persons selling ale and other liquors without licence.

Justices licensing alehouses, &c. to take recognizance in the sum of 10 l. for the maintenance of good order;

“ Whereas the laws concerning alehouses, inns and victualling-houses, and the licensing thereof, are defective and insufficient for correcting and suppressing the abuses and disorders frequently done and committed therein, and also for the conviction and due punishment of persons taking upon themselves to sell ale, beer or other liquors by retail without licence; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, That upon granting licences by justices of the peace to any person to keep an alehouse, inn, victualling-house, or to sell ale, beer and other liquors by retail, every such person shall enter into a recognizance to the king's majesty, his heirs and successors, in the sum of ten pounds, with two sufficient sureties, each in the sum of five pounds, or one sufficient surety in the sum of ten pounds, under the usual condition, for maintenance of good order and rule within the same; and in case the person applying for such licence shall be hindered through sickness or infirmity, or any other reasonable cause, to be allowed by the said justices of peace, to attend in person at the meetings of the same justices for granting the said licences, then that it shall and may be lawful for them to grant such licence, upon two sufficient sureties entering into such recognizance, each in the penalty of ten pounds, for performance of the condition of the said recognizance; which said recognizance, with the condition thereof, fairly written or printed, shall forthwith, or at the next general or quarter session of the peace at farthest, after granting such licences, be sent or returned to the clerks of the peace, or persons acting as such, for every county, riding, city, liberty or town corporate in that part of *Great Britain* called *England*, wherein such licences shall be granted, under the hands of the justices of the peace before whom such recognizances were taken, to be by the said clerks of the peace, or such other person acting as such, duly entered or filed amongst the records of the sessions of the peace; and that for every such licence granted without taking such recognizance, and for every such recognizance taken, and not sent or returned

and to send the recognizances to the clerks of the peace,

on penalty of  
3 l. 6 s. 8 d.

as aforesaid, every justice of the peace signing such licence shall forfeit the sum of three pounds six shillings and eight pence.

II. " And for the better preventing disorders in alehouses, be it further enacted, that no licence to keep the same shall be granted to any person not licensed the year preceding, unless such person produce at the general meeting of the justices in *September*, a certificate under the hands of the parson, vicar or curate, and the major part of the churchwardens and overseers, or else of three or four reputable and substantial householders and inhabitants of the parish or place where such alehouse is to be, setting forth that such person is of good fame and of sober life and conversation; and it shall be mentioned in such licence, that such certificate was produced, otherwise such licence shall be null and void.

Licences to be granted to none not licensed the year preceding, unless such as shall produce certificates of their good fame.

III. " Provided nevertheless, that if any licensed person shall die or remove from an alehouse, it shall be lawful for the person succeeding to such house to keep on the said alehouse during the residue of the term of such licence, on condition that within thirty days after such death or removal such person obtain such certificate as aforesaid, to be signed by some neighbouring justice, in order to its being produced at the next general meeting in *September*; and if such certificate be not so obtained and signed within the said thirty days, then immediately from and after the expiration thereof, such licence shall be null and void; and no licence shall intitle any person to keep an alehouse in any other place than that in which it was first kept by virtue of such licence, and such licence, with regard to all other places, shall be null and void.

Licensed person dying or removing, the successor, upon obtaining such certificate, may keep on the house for the residue of the term of the licence, &c.

IV. " Whereas by an act made in the second year of his present majesty's reign, intituled, *An act to revive the laws therein mentioned*, &c. amongst other things it was enacted, that no licence shall be granted to any person to keep a common inn or alehouse, or to retail any brandy or strong waters, but at a general meeting of the justices of the peace acting in the division where the said person dwells, to be holden on the first day of *September* yearly, or within twenty days after; or at any other general meeting of the said justices to be holden for the division wherein the said person resides; which regulation, by reason of the last-mentioned provision, has been found by experience not to have the effect intended by the said regulation; Be it therefore enacted by the authority aforesaid, that the last before-mentioned provision shall be and is hereby repealed; and that from henceforth no licence for the purposes aforesaid shall be granted, but on the first day of *September* yearly, or within twenty days after; and that such licence shall be made for one year only, to commence on the twenty-ninth day of the said *September*; and that the day and place for granting such licences shall be appointed by two or more of the justices acting for the division, by a warrant under their hands and seals, at least ten days before such meeting, directed to the high constable or high constables of the said division, requiring him or them to order his or their respective petty constables or other peace officers, to give notice to the several inn-keepers and alehouse-keepers within their respective constablewicks, of the day and place of such meeting; and all licences hereafter granted at any other

2 Geo. 2. c. 28. f. 11.  
Last provision in the said clause repealed.  
Licences to be granted on 1st Sept. or 20 days after, and the same to be made but for one year;  
Notice to be given of the time and place for granting them.

time or place shall be null and void to all intents and purposes whatsoever.

Clerks of the peace to deliver copies of the recognizances to the justices at their general meetings for granting licences, yearly.

V. " And be it further enacted, that the clerks of the peace shall keep a register or calendar of all the recognizances so sent or returned, and shall deliver or cause to be delivered to the justices of the peace at their general meetings in *September* every year, for granting licences in each division or place, a true copy of such register or calendar; and that for every recognizance there shall be paid by the clerk or clerks of the justices taking such recognizances to the said clerks of the peace, as their fee for filing or recording the said recognizance, and for making and delivering copies of the said register or calendar thereof, as aforesaid, the sum of one shilling, and no more; which shall be paid to the clerks of the said justices by the persons licensed, over and above the fees payable to the said justices clerks.

Recovery of the forfeitures for granting licences without taking a recognizance.

VI. " And be it enacted by the authority aforesaid, that the said forfeitures for granting such licences, without taking recognizances, shall and may be sued for and recovered by action of debt, bill, plaint or information, in any of his majesty's courts of record at *Westminster*, for the use of the person or persons who shall sue or prosecute for the same, together with costs of suit; wherein no essoin, wager of law, or more than one imparlance shall be allowed.

Where a justice shall adjudge the recognizance to be forfeited, he is to summon the party to the quarter-sessions, &c.

VII. " And be it further enacted by the authority aforesaid, that any justice of the peace of any county, riding, city, liberty or town corporate, wherein such licence shall be granted, upon complaint or information that such licensed person hath done or committed any act, offence or misdemeanor, whereby in the judgment of the same justice such recognizance may be forfeited, or the condition thereof broken, may by summons under his hand and seal require such person so complained of, or informed against, to appear at the next general or quarter session of the peace for the said county, riding, city, liberty or town corporate, then and there to answer to the matter of such complaint or information; and also may bind the person or persons who shall make such complaint or information, or any other person or persons, in a recognizance to appear at such general or quarter session, and give evidence against such person so complained of or informed against; and the justices of the peace in their general or quarter sessions shall have power to direct the jury which shall attend at such sessions for the trial of traverses, or some other jury of twelve honest and substantial men, to be then and there impanelled by the sheriff, without fee or reward, to inquire of the misdemeanor charged in the said complaint or information; and if such jury shall find that the person so complained of, or informed against, hath done any act whereby the condition of his recognizance is broken, such act being specified in such complaint or information, it shall and may be lawful for the court at such general or quarter sessions to adjudge such person guilty of the breach of such recognizance; which verdict and adjudication shall be final to all intents and purposes; and thereupon the said justices shall order the recognizance entered into by such offender to be estreated into his majesty's court of *Exchequer*,

and the jury finding him guilty, the recognizance is to be estreated,

*chequer*, to be levied to his majesty's use; and that the said person, the condition of whose recognizance shall be so adjudged to be broken and forfeited, shall, from and after such adjudication, be utterly disabled to and he is disabled from selling any ale, beer, cyder, perry, spirituous liquors or strong waters, for the space of three years; and any licence or licences, granted or to be granted to such person during such term, shall be void, and of none effect. selling beer, &c. for three years.

VIII. " Provided, that the said justices may at the request of the prosecutor or party so complained of, or informed against, or either of his or her sureties, if they shall see just, adjourn the hearing and trial of the said complaint or information to the then next general or quarter sessions of the peace, where the same shall be finally determined. Justices may adjourn the trial to next sessions.

IX. " And whereas many persons presume to sell ale, beer, cyder, perry or other liquors, without such licence as is required by law for selling the same; and it is difficult, by reason of many evasions that are made use of, and by some defects in former laws, to convict such offenders; Be it therefore enacted, that where any justice of the peace shall suspect that any alehouse-keeper, victualler or retailer, sells ale, beer, cyder or perry, without such licence, it shall and may be lawful for such justice to call such suspected person before him, and also any excise officer or gauger, to produce before such justice, his stock book, or other account which such officer keeps, of the charge or survey of such suspected person, in respect of any of the liquors aforesaid; and likewise to examine such excise officer or gauger upon oath, touching the manner in which such officer surveys or charges such suspected person, in respect of any of the liquors aforesaid, or how or in what manner such suspected person actually pays the duties for any of the said liquors; and if it shall appear by such stock book or other account, or by the examination of the said officer or gauger, that such person so suspected of selling any of the liquors aforesaid, is surveyed as a victualler or retailer, and is charged with the same duties that victuallers and retailers are usually charged with, and pay for any of the liquors aforesaid, and is not intitled to the allowance or abatement given to common brewers, then and in such case such suspected person shall be deemed an alehouse-keeper, victualler, retailer or seller of any of the liquors aforesaid, to all intents and purposes, as if the same had been proved by two witnesses. Where a justice shall suspect that any victualler sells ale, &c. without licence, he may summon him, and the officer who surveys him, and examine such officer upon oath.

X. " And be it further enacted, that if any person shall make information before any one justice of the peace, and shew probable cause that he suspects that any person sells ale, beer or other liquors without a licence from two justices, it shall and may be lawful to and for such justice to call such suspected person before him, and also to summon any other person or persons as evidence, to prove the charge against such suspected person; and if such person so summoned shall refuse to appear, or when appearing, shall refuse to be examined upon oath, and give evidence as aforesaid, such person or persons shall forfeit the sum of ten pounds, to be levied by distress and sale of the goods and chattels of such offender or offenders, by warrant under the hand and seal of such justice, rendering to him or them the overplus, after charges of the said distress and sale deducted, to be Justice upon information that any person is reasonably suspected of selling ale, &c. without licence, is to summon the party and evidence. Persons summoned not appearing, to forfeit 10l.



be paid to the overseers for the use of the poor of the parish or place where such person or persons so offending shall live.

Persons disabled by conviction to sell ale, &c. disabled also from selling spirituous liquors, &c.

XI. " And be it further enacted, that if any person shall be disabled by conviction to sell ale, beer, cyder or perry, such person shall by the same conviction be also disabled to sell any spirituous liquors or strong waters, any licence before obtained for that purpose notwithstanding; and every licence granted to the person so convicted, to sell ale, beer, cyder, perry, spirituous liquors, strong waters, or any of them, from the time of such conviction shall be null and void; and every person selling ale, beer, cyder, perry, spirituous liquors, strong waters, or any of them, during the term of such disability, shall be subject to all or such of the penalties, as are respectively inflicted by law for selling ale, beer, cyder, perry, spirituous liquors, strong waters, or any of them, by retail without a licence; and in all prosecutions of such offenders, a certificate from the clerk of the peace (or person acting as such) of any such conviction, shall be legal evidence; which certificate such clerk of the peace or person shall grant on demand without fee or reward.

Penalty of selling ale, &c. without a licence from two justices;

to be levied by distress and sale;

one moiety to the informer, and the other to the poor; for want of distress, the person to be committed.

XII. And be it farther enacted, that every person so convicted of the offence of selling ale, beer, or other liquors, without a licence from two justices of the peace, shall for every such first offence forfeit the sum of forty shillings; and for every such second offence shall forfeit the sum of four pounds; and for every such third offence shall forfeit the sum of six pounds; all which said respective forfeitures shall and may be levied by distress and sale of the goods and chattles of every such offender (rendering to him the overplus, after charges of the said distress and sale deducted) by warrant under the hand and seal of the justice convicting such offender; and shall be paid one moiety thereof to the informer, and the other moiety thereof to the overseers of the poor, for the use of the poor of the parish or place where such offence was committed; and if no sufficient distress shall be found, whereon to levy the said respective forfeitures, then the said justice of the peace shall and may commit every such offender so respectively convicted as aforesaid, to the common gaol, or other prison, or house of correction, within his jurisdiction, without bail or mainprize, for the space of one month, for the first offence; and for the second offence, for the space of two months; and for the third offence, until such offender shall be discharged by order of the court of general quarter sessions. Explained by 28 Geo. 2. c. 19. *sect.* 2. and altered by 5 Geo. 3. c. 46.

Conviction to be certified to the next quarter sessions, and filed.

XIII. And that every conviction of any offender for selling ale, beer, or other liquors without such licence, or after being disabled to sell, as aforesaid, shall be certified by the justice of the peace making the same, to the next general or quarter session of the peace, to be filed or entered amongst the records of the said session; and that such conviction shall and may be drawn up and certified in the following form of words, as the case shall happen, or in any other form of words to the same effect, *mutatis mutandis*, that is to say.

# Alehouses.

31

Middle- } A. B. is convicted on his or her own confession (or, on the oath of Form of con-  
sex. } ) of having sold ale, beer, or other liquors, in the viction.  
parish of } in this county, on the Day of  
without being licensed thereto according to law (or, after being  
disabled to sell, as the case may be). Given under my hand and seal this  
day of

And there shall be added, that the same is the first, second or third conviction; which said conviction, in the same or the like form of words, shall be good and effectual in law to all intents and purposes, and shall not be qualified, set aside, or adjudged void or insufficient, for want of any other form or words whatsoever.

XIV. Provided always, that such offender who shall be punished by virtue of this act, shall not be punished again for the same offence by any former act; and that such offender who shall be punished by virtue of any former act, shall not be punished again for the same offence, by virtue of this present act, or any thing herein contained. Offender not liable to double punishment for the same offence.

XV. Provided that this act, or any thing herein contained, shall not any wise be prejudicial to the privilege of licensing taverns and other publick houses, claimed by the two universities of that part of *Great Britain* called *England*, or either of them, nor to the chancellor, masters and scholars, or any officers of the same, or their successors, but that they may use and enjoy such privilege as they have heretofore lawfully used and enjoyed; any thing herein contained to the contrary notwithstanding. Rights of the universities to grant licences reserved.

XVI. Provided always, that nothing herein contained shall extend or be construed to extend to alter the time or times of granting licences for keeping of common inns or alehouses, or to oblige persons not licensed the year preceding to produce certificates, in any city or town corporate. The times of granting licences for common inns, not altered, &c.

XVII. Provided always, that any person shall be deemed a competent witness, and be admitted to give evidence upon any information or complaint for any offence committed against this act, notwithstanding such person be an inhabitant of or charged or liable to be charged to the payment of any rates or assessments for the relief of the poor of any parish or place where such offence shall be committed. Inhabitant of the parish deemed a competent witness.

**Stat.** 28 *Geo.* 2. c. 19. [*A. D.* 1755.] “Made, among other purposes, 28 *Geo.* 2. for the further punishing persons selling ale or other liquors without c. 19. licence.”

*Sett.* 2. And whereas doubts have arisen upon the construction of an act of parliament passed in the 26th year of the reign of his present majesty, intituled, *An act for regulating the manner of licensing alehouses, in that part of Great Britain called England, and for the more easy convicting persons selling ale and other liquors without licence*, whether a person having been convicted of three several offences in selling ale, beer or other liquors, without a licence from two justices of the peace, as by the said act is directed, is liable to any punishment for any such offence, of which he may be guilty after

offenders, after third conviction, to forfeit 6l. for every offence. after such third conviction; be it further enacted by the authority aforesaid, that every person so selling without a licence as aforesaid, after such third conviction, shall, for every such offence, so often as it shall happen, forfeit the sum of six pounds, to be levied and disposed of in like manner as the forfeitures on the first, second and third conviction are directed to be, in and by the said act; and in case no sufficient distress shall be found whereon to levy the said several forfeitures, then the justice of the peace, who shall have convicted such offender, shall and may commit him or her so convicted to the common gaol, or other prison or house of correction within his jurisdiction, without bail or mainprize, until such offender shall be discharged by order of the court of general or quarter sessions.

29 Geo. 2.  
c. 13.

**Stat. 29 Geo. 2. c. 13.** [A. D. 1756.] Made, among other purposes, “for granting to his majesty a duty upon licences for retailing beer, ale, and other exciseable liquors.”

On death or removal of persons occupying licensed houses, their assigns, &c. may continue the same for the residue of the year.

**Secl. 23.** “Provided nevertheless, and be it enacted by the authority aforesaid, that if any person licensed to sell ale, beer, or other exciseable liquors, shall die, or remove from the alehouse or other place wherein such ale, beer, or other liquors shall, by virtue of such licence, be sold, it shall and may be lawful for the executors, administrators and assigns of such person so dying or removing, who shall be possessed of such house or place, or the occupier thereof, to sell ale, beer, or other liquors therein, during the residue of the term for which such licence shall have been granted to the person so dying or removing, without any certificate from any justice of the peace, or any new licence to be had or obtained in that behalf; any thing in the act made in the 26th year of the reign of his present majesty, or any other law to the contrary thereof in any wise notwithstanding.”

**Secl. 24.** “Provided always, and be it enacted, that in case any alehouse or victualling-house, in that part of *Great Britain* called *England*, shall become empty or unoccupied after the general day appointed for licensing (the occupier whereof was duly licensed the year preceding) it shall be lawful for any two of his majesty’s justices of the peace, at a petty sessions, to grant a licence to any new tenant or occupier, to open such house as an alehouse or victualling-house, and to sell ale there, till the next general licensing day, so as the said licence be stamped as herein directed: such new tenant or occupier obtaining such certificate, as is directed and prescribed in and by an act of parliament, made in the 26th year of his majesty’s reign, intituled, *An act for regulating the manner of licensing alehouses, in that part of Great Britain called England; and for the more easy convicting persons selling ale and other liquors without licence.*

Stat. 5 Geo.  
3. c. 46.

**Stat. 5 Geo. 3. c. 46.** [A. D. 1765.] made, among other purposes, “for further securing and improving the stamp duties in *Great Britain*.”

Clause in act  
29 Geo. 2.

**Secl. 20.** “And whereas by an act of parliament made in the twenty-ninth year of the reign of his late majesty king *George the second*, intituled, *An act for granting to his majesty a duty upon licences for retailing beer, ale, and*

and other exciseable liquors; and for establishing a method for granting such licences in Scotland; and for allowing such licences to be granted at a petty sessions in England, in a certain case therein mentioned; it is, amongst other things, enacted, that from and after the feast of *Easter* one thousand seven hundred and fifty-six, there should be, throughout the kingdom of *Great Britain*, raised, levied, collected, and paid, to his said then majesty, his heirs, and successors, for the purposes therein mentioned, a duty of twenty shillings for every piece of vellum, or parchment, or sheet or piece of paper, on which should be engrossed, written, or printed, any licence for selling ale or beer, or other exciseable liquors, by retail, over and above all other duties chargeable thereon: and whereas several provisions are therein and thereby made, for the duly raising, levying, collecting and paying, the same duty: and whereas it is found, by experience, that the said provisions are not sufficient for that purpose, in that part of *Great Britain* called *England*, the dominion of *Wales*, and town of *Berwick upon Tweed*; and that, by divers frauds and other ill practices, the crown has been, from time to time, defrauded of a great part of the said duty, and it is rendered difficult to convict the offenders: for remedy whereof, and for the further and better securing the raising, levying, collecting, and paying, of the said duty for the future, and for preventing such frauds and ill practices, and for rendering the conviction of the offenders more easy in that part of *Great Britain* called *England*, the dominion of *Wales*, and town of *Berwick upon Tweed*, Be it enacted by the authority aforesaid, that from and after the said fifth day of *July* one thousand seven hundred and sixty five, every victualler, or alehouse keeper, and every person selling ale, or beer, or other exciseable liquors, by retail; and every person permitting or suffering any ale, or beer, or any other exciseable liquors, to be sold by retail, in his, her, or their house, outhouse, or yard, garden, orchard, or other place, in that part of *Great Britain* called *England*, the dominion of *Wales*, and town of *Berwick upon Tweed*, do and shall, on demand to him or her made by any officer appointed by the commissioners for the time being to manage the duties charged on stamped vellum, parchment, and paper, produce and shew to such officer or officers, so demanding the same, his or her licence to sell ale, or beer, or other exciseable liquors, by retail; and shall permit such officer, at his own expence, to take and have a copy thereof on demand: and in case any such victualler, or alehouse keeper, or other person selling ale, or beer, or other exciseable liquors, by retail, or other person or persons so permitting or suffering any ale, beer, or other exciseable liquors, to be sold by retail in his, her, or their house, or outhouse, yard, garden, orchard, or other place as aforesaid, shall refuse or neglect so to do; then every such victualler, or alehouse keeper, or person selling ale, or beer, or other exciseable liquors, by retail; or so permitting or suffering any ale, beer, or other exciseable liquors, to be sold by retail in his, her, or their house, or outhouse, yard, garden, orchard, or other place as aforesaid, shall, for every such offence, forfeit the sum of forty shillings.

Retailers of beer, and other exciseable liquors, to exhibit, on demand, their licence to the officer appointed by the commissioners for stamps,

and to permit him to take a copy thereof;

on forfeiture of 40 s.

*Sec. 21.* " And be it further enacted by the authority aforesaid, that for the better detecting of such frauds and ill practices, and preventing

Clerks of the peace, town clerks, and

common clerks, or their deputies, are to deliver, upon demand, to the officer of the stamp duties, lists of the several persons licensed to retail beer or other exciseable liquors,

he paying for such copy 1 q. for each licensed person inserted in such list.

If such list shall be refused, or delayed, or be given in imperfect,

the offender forfeits 5 l.

Instead of the pecuniary and corporal punishments inflicted by former acts, on retailers of beer, &c. not being duly licensed, they are to forfeit, for the first offence,

the same for the future, every clerk of the peace of or for each county, riding, or division, in each county in that part of *Great Britain* called *England*, and the dominion of *Wales*, and town of *Berwick upon Tweed*, or his deputy, or person acting as such; and every clerk of the peace, or town clerk, or common clerk, or person acting as such, of or for every city, town, and liberty, in that part of *Great Britain* called *England*, and the dominion of *Wales*, and the town of *Berwick upon Tweed*, where licences to sell beer or ale, or other exciseable liquors, are, pursuant to the said act, to be granted by the justices or magistrates, of or for such city, riding, division, town, or liberty, and of the said town of *Berwick upon Tweed*, or his deputy, or person acting as such, do and shall, on demand to him made by any officer of the stamp duties for that purpose, or within the space of three days next after such demand shall be so made, deliver, or cause to be delivered, to such officer a true list of the names and places of abode of all the victuallers, alehouse keepers, and other persons then licensed to sell ale or beer, or other exciseable liquors, by retail, within every such county, riding, division, city, town, or liberty; and that on the delivery thereof, such officer of the stamp duties shall pay to such clerk of the peace, or his deputy, or person acting as such, or to such town clerk, or common clerk, or his deputy, or person acting as such, for the making out and writing every such list, after the rate of one farthing for every licensed person whose name shall be therein inserted; all which monies so paid shall, from time to time, be allowed to every such officer of the stamp duties in his account; and in case any such clerk of the peace, or his deputy, or person acting as such, or any such town clerk or common clerk, or his deputy, or person acting as such, shall refuse or neglect so to do by the space of three days next after such demand shall be so made, or shall not insert in such a list a full, true, and perfect account of the names and places of abode of all the persons the same ought to contain; that then and in every such case, every person so offending shall, for every such offence, forfeit the sum of five pounds.

*Self. 22.* " And whereas by the laws now in force in that part of *Great Britain* called *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, persons selling ale or beer, or other exciseable liquors, by retail, without licence, are liable and subject by different laws to different penalties and punishments, which has occasioned much confusion, and an ill and improper use has been made thereof in many instances: for the prevention whereof, be it further enacted by the authority aforesaid, that from and after the fifth day of *July* one thousand seven hundred and sixty five, every person lawfully convicted of selling ale or beer, or other exciseable liquors, by retail, after that day, in that part of *Great Britain* called *England*, the dominion of *Wales*, or the town of *Berwick upon Tweed*, without being duly licensed so to do, shall for every such offence, forfeit and undergo the several penalties and punishments herein after mentioned and provided in that behalf, instead and in lieu of the several pecuniary and corporal punishments which they are now liable or subject to by any law now in force; that is to say, for the first offence the sum of forty shillings,

shillings; and also the costs and expences of convicting such offender; and in case such sum, together with the charges and expences of convicting such offender, shall not be paid within the space of fourteen days next after such conviction, that then the offender shall suffer imprisonment for the space of one month, unless he or she shall sooner pay such penalty, and the costs, charges, and expences of such conviction, and executing the same: and for the second offence, the sum of four pounds, and also the costs and expences of convicting such offender; and in case such sum, together with the charges and expences of convicting such offender the second time, shall not be paid within the space of one week next after such second conviction, that then the offender shall suffer imprisonment for the space of two months, unless he or she shall sooner pay such penalty of four pounds, and the costs, charges and expences of such second conviction, and executing the same: and for the third offence, the sum of six pounds, and also the costs and expences of convicting such offender; and in case such sum of six pounds, together with the charges and expences of convicting such offender the third time, shall not be paid within the space of three days next after such third conviction, that then the offender shall suffer imprisonment for the space of three months, unless he or she shall sooner pay such penalty of six pounds, and the costs, charges, and expences of such third conviction and executing the same: and the like penalty and punishment for every other offence after the third offence and conviction thereof, as for the said third offence; all which said costs and expences shall be assessed, settled, and ascertained by the justice or justices of the peace before whom such offenders shall respectively be convicted; any law, statute, or custom, to the contrary thereof in any wise notwithstanding: all which penalties and forfeitures shall go and be paid, the one moiety thereof to his majesty, his heirs and successors, and the other moiety thereof, and also all such costs, charges, and expences, to be assessed or ascertained as aforesaid, to the prosecutor or prosecutors of every such offender or offenders.

*Sec. 23.* “ And be it further enacted by the authority aforesaid, that it shall and may be lawful to and for any one or more justice or justices of the peace, for the time being, of the county or place where any of the said offences against this act, or the said former act, shall be committed, to hear and determine the same offences in a summary way; which said justice and justices of the peace are hereby authorized and required, upon any information exhibited, or complaint made, in that behalf, to or before him or them, to summon the party or parties accused, and also the witnesses on either side (if they shall be required to summon any such witnesses); and upon the appearance, or contempt of the party or parties accused by not appearing, to proceed to examine and hear the matter in a summary way; and also to examine such witnesses on oath as shall be produced therein (which oath such justice and justices respectively is or are hereby impowered to give and administer), and to give his or their judgment thereon; and in case he or they shall convict the party or parties so accused or complained against, of the offence laid to his, her, or their charge,

40 s. and costs of conviction; and, on non-payment, are to be committed for one month; for the second offence 4 l. and costs; and, on non-payment, to be committed for two months; for the third offence 6 l. and costs, and, on non-payment, to be committed for 3 months; and the like penalty and punishment as the third, for every subsequent offence. The costs are to be settled by the justices; and the penalties to be applied, one moiety to the crown, and the other moiety and costs to the prosecutor. The justices are authorized to hear and determine the said offences in a summary way.

charge, and such party or parties shall refuse or neglect to pay the penalty or penalties, for which he, she, or they, stand convicted, within the time herein before mentioned for that purpose, together with the costs of such conviction or convictions, to be assessed, settled, and ascertained, as aforesaid; that then, and in every such case, it shall and may be lawful for every such justice and justices, and he and they, and each of them, is and are hereby authorized and required to issue his or their warrant or warrants under his or their hand and seal, or hands and seals, for the apprehending and committing to prison every such offender, for such time, and in such manner, as the nature of the offence shall require, according to the true intent and meaning of this act.

Witnesses being duly summoned, neglecting or refusing to appear (without reasonable cause shewn) or to give evidence, forfeit 40 s.

*Sett.* 24. " And be it further enacted by the authority aforesaid, that if any person or persons shall be summoned as a witness or witnesses to give evidence before any such justice or justices of the peace, touching any of the matters aforesaid, either on the part of the prosecutor, or of the person or persons accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such his, her, or their neglect or refusal, to be allowed of by such justice or justices of the peace; or, appearing, shall refuse to be examined on oath, and give evidence before such justice or justices of the peace before whom the prosecution shall be depending; that then, every such person shall forfeit, for every such offence, the sum of twenty shillings, to be levied and paid in such manner, and by such means, as are herein before directed as to other penalties.

Persons aggrieved by the judgment or conviction of a justice, and giving security,

may appeal to the quarter sessions,

who are to hear and determine the matter finally; and if they adjudge the appeal to be frivolous, or vexatious, may award costs, not exceeding 5l

*Sett.* 25. " And be it further enacted, that if any person or persons shall think himself, herself, or themselves, aggrieved by the judgment or conviction of any justice or justices of the peace, for any of the offences aforesaid, and shall give security to the satisfaction of such justice or justices of the peace for the payment of the penalty, costs, and expences, to be expressed in the warrant or warrants of distress on such conviction; that then, and in every such case, after such security given, and not otherwise, it shall and may be lawful to and for such offender and offenders to appeal from and against such conviction or convictions, to the justices of the peace assembled at the next quarter sessions of the peace to be held for such county, riding, division, liberty, city, town, or place, unless such sessions of the peace shall be held within six days or less next after such conviction or convictions shall be so had or made; and in that case to the justices of the peace to be assembled at the next sessions after such sessions, and not afterwards; and that the justices of peace assembled at such sessions, shall thereupon proceed to hear and determine the matter of every such appeal, and their judgement thereon shall be final and conclusive to all intents and purposes whatsoever; and in case the justices of the peace so assembled at such sessions, shall find and adjudge any such appeal to be frivolous or vexatious, it shall and may be lawful to and for them to give and adjudge to the party or parties grieved by such appeal, his or their reasonable costs and charges occasioned thereby, not exceeding in the whole the sum of five pounds on any one appeal.

*Sett.* 26.

*Sett.* 26. " And, in order to prevent frivolous and vexatious appeals, Form of con-  
be it further enacted by the authority aforesaid, that a conviction in the viction.  
form or to the effect following, *Mutatis mutandis*, as the case shall happen,  
to be, shall be good and effectual to all intents and purposes whatsoever,  
without stating the case, or the facts or evidence in any more particular  
manner (that is to say)

Middlesex ff. **B**E it remembered, That on this day of  
in the year A. B. of, &c. was duly convicted be-  
fore me C. D. one of his majesty's justices of the peace for the  
county of Middlesex, or before us C. D. and E. F. two of his  
majesty's justices of the peace for the said county of Middlesex  
(as the case shall happen to be) for selling ale or beer, or other  
exciseable liquors (as the case shall happen to be) without being  
duly licensed so to do, according to the statutes in such case made  
and provided, whereby he, she, or they, has or have forfeited  
the sum of this being the first, second, or  
third offence (as the case shall happen to be) besides the costs  
and expences of this conviction; which costs and expences I the  
the said justice of the peace, or we the said justices of the peace  
(as the case shall happen to be) do hereby ascertain and assess,  
at the sum of pursuant to the statute in such  
case made and provided.

Given under my hand and seal, or our hands and seals (as the  
case shall happen to be) the day and year above written.

Indictment that he kept a common alehouse without licence *contra form* An indict-  
*statut'*; *non cul'* pleaded; verdict *pro rege*. ment doth not

In arrest Sir *Barth. Shower* moved that no indictment lies, because it is  
a new offence created by a particular statute, and a particular method  
appointed for the conviction and punishing of it: at common law any  
man might keep an alehouse, and might sell beer or ale, out of, or in  
his house at pleasure, and there was no law to restrain them; though as  
to inns, some opinions have been, that licences were necessary, as justice  
*Croke* and some others held, 1 *Bulstr.* 109. contrary is *Godb.* 345. and  
2 *Roll's Abr.* 84. That no indictment lies at common law for erecting  
an inn without a licence; it is true, they may be punished as nuisances, if  
in inconvenient places. In the resolution concerning inns in 19 *Junii*  
22 *Jac.* 1. It is resolved that any might erect an inn without any allow-  
ance or licence, and any man might keep an alehouse before the statute of  
*Edw.* 6. as at this day any man may set up hackney coaches for hire, or  
use any trade not prohibited by 5 *Eliz.*

Now where a particular method is prescribed, that is to be pursued, and  
no other. By the 5 & 6 of *Edw.* 6. c. 25. [See page 12.] The justices have  
power to remove and put away the common selling of ale and beer in  
any such places as they shall think fit, and none shall be admitted or  
suffered

lie for keeping  
an ale-house  
without li-  
cence.  
1 *Show.* 398.  
*Trin.* 4 *Will.*  
and *M. Rex*  
*v. Marriot.*



## Alehouses.

suffered to sell, but such as shall be licensed, &c. giving recognisance. *Stat. 4.* If any person shall do it of his own authority, two justices shall commit for three days, and before deliverance the said justices shall take recognisance not to sell again; then he is to make a certificate to the sessions, which shall be a sufficient conviction, and there they are to assess 20 s. fine. Now it is plain, this method can never be observed upon an indictment, and the makers of this law never intended such a prosecution; here are no negative words, but only by way of prohibition to the justices not to suffer any without licence: the first gives them authority to remove and put away from such places as they shall think fit; then it is said none shall be suffered, which is a prohibition on the justices, not upon the party: Then the third section shews it plain, for there where order is taken about inquiry into the breach of the recognisance for keeping a disorderly house, there it is said by presentment or otherwise; now here in this clause is no such thing.

Then for 3 *Car. 1. cap. 3.* [See page 23.] There it is to be on view by the mayor, justice, or head officer, on oath of two witnesses before him, and the penalty to be levied by the constable upon warrant, and the words are only, if any person or persons, &c. and no negative words at all.

In *Palmer's Rep. 388. per Justice Haughton*, a man cannot be indicted for keeping an alehouse without licence, for the *Stat. of Edw. 6.* is that they shall be committed, and the justice shall therefore imprison the party, and 2 *Roll's Rep. 398.* is the same.

*Castle's case* on 18 *Hen. 6. cap. 11.* in 2 *Cro. 643.* and 2 *Roll's Rep. 247.* is express; Indictment for taking on him to be a justice of peace, not having lands to such a value: and the same exception taken as here, because a statute appoints a penalty, which is to be recovered by bill, plaint or information, and therefore not by indictment, because no offence before: and the court was all of opinion, that where a statute inflicts a penalty for the doing of a thing that was no offence before, and appoints how it shall be recovered, it shall be punished by that, and no other means, not by indictment, and that statute is precisely as this, that none shall be assigned, &c. It is one of the resolutions upon the case of penal statutes, 7 *Rep. 36.* That every *Act* which gives a new penalty, ought to be pursued strictly, both in the prosecution and levying of it, according to the method prescribed by the *Act*: and in *Plowd. 206. Stradling's case*, it is allowed as a rule, when an *Act of parliament* gives power or interest to a particular person, that particular designation is exclusive of any other; the like case was here, *Pasch. 2 Jac. 2. B. R. Dom. Rex* against *Joice*, indictment for keeping an alehouse without licence, and Sir *Henry Poll.* moved then, as I do now, to arrest the judgment for these and the like reasons, and the judgment was arrested: besides,

This is to inflict a greater penalty: for the charge of trying an indictment is more than the penalty; perhaps it may be more just and fair for trial, but the other less expensive, and that may be the reason why this law doth not mention indictment.

Obj.

*Obj.* *Crafton's case*, *Mod. Rep.* 34. *Sid.* 439. *Nonconform'* residing in a corporation. But that was *Zachary Crafton's case*, there it was to be by bill, &c. Here are clauses that particularly seem to restrain it to this method, *viz.* committed till he give recognisance, which the justice is to certify, which this court cannot execute.

. *Dominus Rex* against *Baker*, *Hill.* 24 *Car.* 2. in 3 *Keble* 106. seems to the contrary; but *Castle's case* is as strong an authority for me; and I know of no judgment ever had in this case, but that of *Joyce*; this hath been rarely practised, which shews the current opinion to have been against it. *Dominus Rex* against *Fawcner*, 2 *Keble* 506. was one, and *Saunders* took exception, because not said *cont' form' statut'*, and quashed, but this quære could not happen there, because the indictment was not upon this statute. *G. J. Holt, cæteris consentientibus*, Let it stay. *Eyres*: It cannot be maintained I doubt.

By the stat. of 4 & 5 *Will. & M.* Intituled, *An act for carrying on a* A house for  
boarders and  
lodgers, for  
themselves and  
horses, is not  
an inn nor ale-  
house. 12  
Mod. 254.  
Mich. 10  
Will. 3. B. R.  
Parker v.  
Flint,  
*war with France*, it was enacted, that constables should quarter soldiers upon innkeepers, and such as kept alehouses and victualling-houses, livery stables, or sold brandy, metheglin or cyder by retail; and in an action brought by the plaintiff against a constable for quartering a horse and dragoon upon him, he pleaded not guilty, being an officer, and gave the statute in evidence: And the jury found, that there are wholesome wells at *Epston*, and that the plaintiff, during the season for drinking the waters, indefinitely *demist conclavia*, anglicè, let lodgings, to such as went thither to drink the waters, for the air, or for their pleasure; and did dress victuals for them, and sell them ale and beer, and entertained their horses at 8*d.* *per diem*, but sold no victuals, drink, &c. to any but the lodgers; and that plaintiff had no licence from any justice of peace to sell ale, and that the defendant did billet a soldier and a horse upon the plaintiff, who compelled him to find victuals for himself, and provision for his horse, for the space of two months.—Resolved *per cur.* that the plaintiff's house was not a house within the description of the statute; for first it was no inn, for the verdict finds he let lodgings only, which shews him not compellable to entertain any body, and that none could come there without a previous contract; that he was not bound to sell at reasonable rates, or to protect his guests; but contrary it is in all the said points in case of an innkeeper, and action shall lie against him for default, not by name of *innkeeper*, but of *common innkeeper*. Secondly, It is not an alehouse or victualling house, for those extend only to such alehouses and victualling houses as are known and described by several acts of parliament, which it is a crime to keep without licence; and it must be a *communis taberna*, a *common inn*, where drink is *commonly* sold to all the king's subjects. 3dly, It was resolved to be a statute against the liberty of the subject; for before it no man was obliged to entertain soldiers against his will, as appears by the petition of right, 3 *Car.* 1. and the stat. 21 *Car.* 2. and therefore not to be construed favourably without great necessity. 4thly, That in this case, the constable having wrongfully quartered a dragoon upon him, he was answerable for all the dragoon had committed. Note, in this case *Holt* held

held, that if one comes to an inn, and makes a previous contract for lodging for a set time, and does not eat or drink there, he is no guest, but a lodger; and as such is not under the innkeeper's protection; but if he eats and drinks there, it is otherwise; or if he pays for his diet there, though he does not take it there. And a sign is not essential to an inn, but is an evidence of it.

The justices in sessions have a discretionary power of suppressing alehouses, without shewing any cause or misdemeanor. 2 Lord Raym. 1303. Mich. & Ann. Regina v. Harris.

At the quarter sessions holden at *Guilford* the 12th day of *July* the 8th year of the present queen, the justices grant a licence to *George Harris* for keeping a common alehouse; and at the next sessions, viz. the 4th day of *October* following, they made this order: "Whereas it appears to this court, that *George Harris*, of *Walton upon Thames*, &c. doth keep a lewd and disorderly house, it is therefore ordered by this court, that the said *George Harris* be, and he is hereby suppressed from keeping an alehouse, &c. after six weeks time from the first day of the present sessions, &c." And this order being removed into the *King's bench* by *certiorari*, Mr. *Raymond* moved to quash it, because by the 5 & 6 *Edw. 6. c. 25.* [See page 12.] there must be a previous conviction, and that by the oath of two men, before the justices can hinder his selling of ale, &c. for by the statute, every man who has a licence to sell ale, is to be bound in recognizance with surety, to keep good orders, &c. and that is to be certified at the next quarter sessions, and they are to enquire whether any such persons bound in such recognizances, have done any act, whereby they have forfeited the same; and if they have, to award process to shew why they should not forfeit it. But *per curiam* this order was confirmed, *Holt* chief justice being absent; and by *Powell* justice, The justices in sessions have a power by this act to suppress alehouses, and need not proceed by information or conviction, but they have thereby a discretionary power given them to suppress them without shewing any cause or misdemeanour: And where the act speaks of a conviction, that is only intended when the justices proceed for the penalty, which ought to be by *scire facias*.

Justices may take away a licence without conviction upon the recognizance.

Mandamus lies not to grant a licence to keep an alehouse. Stran. 881. Mich. 4 Geo. 2. John Giles's case.

Mr *Reeve* moved for a *Mandamus* to the justices of the city of *Worcester*, to grant a licence to *Giles*, to keep an alehouse; insisting that it being within a city, the 2 *Geo. 2. c. 28.* [See page 25.] did not extend to it. *Strange contra* insisted, that it was discretionary in the justices, and cited *Salk. 45.* that no appeal lies from the denial of a licence; and if the owner be committed, [upon the stat. 5 & 6 *Edw. 6.*] the want of a licence can only come in question, and not the reason why it was denied. And *per curiam*, there never was an instance of such a *Mandamus*; and therefore we will not grant it.

Information was denied against justices of peace, for refusing to grant a licence under 26 Geo.

A motion was made on 10th of *May* 1757, for an information against these two justices of the peace, for arbitrarily, obstinately, and unreasonably refusing to grant a licence to one *Henry Day*, to keep an inn at the *Rose* and *Crown* in *Everfly, Wilts.* where it was alleged and sworn to be fit and proper, and even necessary that there should be an additional one, there being one there already; and for which occupation of keeping an inn, this man was (as these two justices themselves had allowed on a former

former occasion) a proper person, they having before licensed him to do so at another place. Upon this original motion being made at the bar, Lord Mansfield and Mr. justice Denison held, that notwithstanding this was a matter left in a great measure to the discretion of the justices, yet if it appeared to the court, from sufficient circumstances laid before them, that their conduct was influenced by *partial, corrupt, or arbitrary* views, instead of exercising a fair and candid discretion, the court might call upon them to shew the reasons whereby they guided their discretion. And therefore they were for granting the rule to shew cause as prayed; but Mr. justice Foster, who happened to know the place, and said there was another house of good entertainment there already, thought it sufficient to make a rule upon the two justices, to shew cause why they should not grant this licence. And Lord Mansfield and Mr. justice Denison concurred with him to express the rule in that manner, though the substance was the same: because if they did not shew sufficient cause, the consequence must be granting an information. *Per cur.* unanimously (Mr. justice Wilmot being absent in *Chancery*) a rule was made upon these two justices to shew cause why they did not grant this licence to Henry Day. On Monday 27th of June 1757, upon shewing cause, the justices in their affidavits made no *personal* objections to Day, but thought the certificate insufficient, because not signed by the parson, vicar, or curate. The court was of opinion, that the certificate, being signed by three or four reputable and substantial housekeepers, &c. was sufficient. [See p. 27. f. 2.] But though the justices had mistaken the act, the court cleared them from any wrong motive. But it being suggested, that the present parson and churchwardens were ready to sign a certificate in his favour, the court enlarged the rule to the first day of next term, with a view that he might be licensed at Michaelmas, if there should be no other objection than what arose from the certificate's not being signed by the parson and churchwardens; and that the matter (which seemed to have raised great heats, and was strongly supported by Sir John Astley, on the part of Day) might be accommodated. The rule was accordingly enlarged in these terms, viz. that the first day of the next term be farther given them, to shew cause why they have not granted, &c.

On Friday 18th of November 1757, Mr. Norton again moved (and moved it as a new original motion) for an information against these two justices of peace; who, he said, had at their last general September meeting for granting licences, still persisted in refusing to grant this licence, notwithstanding what had already passed in this court upon the same subject and occasion. Of this fact he had affidavits; and he also produced fresh and circumstantial affidavits, as to the merits, viz. the necessity of such a licence, and the conduct of the justices in their opposition to it. Lord Mansfield: What passed before was, that the court did not think any thing *criminally* imputable to these justices. The court then gave no opinion as to obliging them to grant the licence; but on the contrary, expressly adjourned the consideration of the reasons of their refusal. This former rule was only kept on foot, in order to obtain the *material* end of it; but as to the behaviour of the justices, with regard to the criminal complaint against

2. c. 31. because the justices of the division have the sole discretion, without appeal, and they acted with purity of intention; but if they exercise this absolute discretion with partiality, malice or corruption, an information shall be granted. 1 Bur. Rep. 556, 564. East. 31 Geo. 2. Rex v. Young and Pitts, esquires.

## Alehouses.

them, the court discharged them from any imputation of crime or arbitrary intention to oppress the man. — The court therefore now made the like rule, upon these fresh affidavits, as they had made upon the former, and ordered that both rules should come on together.

Sir *Richard Lloyd*, on *Saturday* 11th of *February* 1758, accordingly shewed cause upon both rules. He observed that it was a sort of rule never before granted; and which he had known refused 25 years ago. He said he never knew a rule made upon justices, to shew cause, why they did not grant a licence, or to enforce them to do so, unless there was some charge of corruption, partiality, bias, or other imputation upon the justices.

Lord *Mansfield* answered, that the affidavits upon which the original motion was made did import such a charge; and the motion was originally made upon that foot. And that the rule was put into its present form, out of tenderness to these gentlemen, and regard to the fairness of their character. And they did indeed, upon the former cause shewn, appear to be free from blame, as to any criminal imputation. But yet, if they have no reasonable objection to the man, they ought to license him, and if they have any reason, they ought to give it. For though they have, it is true, a *discretion* in these cases, yet it must not be permitted to them to exercise an arbitrary and uncontrolled power over the rights of other people, and in cases where their livelihoods are so essentially concerned.

Sir *Richard Lloyd* argued and insisted, that the legislature has made them the *sole* judges, as being such who, from their residence on the spot, must *best* know the persons and their characters, and also the circumstances of time and place. And the legislature has even excluded justices of peace of *other* divisions. And the justices thus intrusted have a right to judge for themselves, and no man can judge for another. And this power is trusted to them by the constitution, by the legislature. It may be very dangerous to them, to be obliged to give their reasons *publickly*, though they may have very sufficient ones to satisfy their own minds, and to direct their own judgment. And if they are thus intrusted, why are they liable to be called to an account by any *other* jurisdiction, unless, they act faultily and wilfully wrong? Indeed, if they do *wilfully* wrong, let them be punished; but when they act quite conscientiously, they are not accountable to any body. Now these gentlemen say, and they swear too, that they really judge this house to be an *improper* house, and this person to be an *improper* person; and that this is their real and sincere opinion. This question affects all the justices in the kingdom; I mean, setting aside the imputation of wilful misbehaviour.

Lord *Mansfield*: Most certainly. No body doubts of the thing, setting aside every degree of imputation: It will not bear an argument.

Sir *Richard* repeated the justices reasons for their refusal; and concluded with insisting on their right to judge for themselves.

Mr *Young* being in court spoke very handsomely in exculpation of himself from any ill intention; and declared very solemnly, that he had acted according to his real sentiments, and the best of his judgment.

Lord

Lord *Mansfield*—It is a matter of too much consequence, and too great length, as I am obliged to go away, to be determined now immediately: and it may as well stand over till next term, as so little time of this term is left. Adjourned.

On *Thursday* 13th of *April* 1758, this case being mentioned again, Lord *Mansfield* proposed altering the rule, by making it, to shew cause why there should not be an information against them; for so, he said, it was originally moved, and this was the true and proper foot to argue it upon; and Mr. *Norton* declared that he proposed to argue it upon that foot; though in tenderness to the justices, and lest the country should run away with a notion of their being under a criminal charge, it had been put into the form that it at present stands in. And Mr. *Nares*, counsel for the two justices, not opposing or objecting to this alteration, the rule was altered accordingly. And now this affair coming on again for the last time, Lord *Mansfield* again declared, that the argument ought to be taken up upon the foot of *criminality* in the justices, for it was so *originally* moved; it was the proper nature of the question; it was so understood by every body, and so meant by the court. For, as he again explicitly declared, there was no pretence upon any other foot, to make a rule upon the justices, who have a discretionary jurisdiction given them by the law. But though *discretion* does mean, and can mean nothing else but exercising the best of their judgment upon the occasion that calls for it; yet if this discretion be wilfully *abused*, it is *criminal*, and ought to be under the control of this court.

Mr. *Nares* and Mr. *Thurlow* for the defendants thereupon argued strongly and very largely, that the justices had been so far from acting *criminally*, that they had acted rightly, properly and honestly: And they hinted that the court had already exculpated them from any criminality of behaviour. And the Legislature have left this jurisdiction so absolutely to the justices of the particular division, that no appeal will lie from their determination, as appears by 1 *Salk.* 45; which is expressly so, and is cited in 2 *Stran.* 881, as a proof of this position. Neither will any *Mandamus* lie to the justices, to oblige them to grant the licence, even though they should appear to have refused it upon reasons which may be looked upon as very suspicious at least, if not very improper. 2 *Stran.* 881. Nor will the court grant an information, for refusing to grant a licence. *Rex v. justices of Nottingham*, where, they said, an information was denied. But *per Cur.* that case was an *abuse*, a gross abuse of their discretion. And the information was therefore granted. And so it was in the case of *Bridgewater*, upon the same foot of abuse of the discretion intrusted to them.—The counsel for the two justices next observed, that *Day's* having for many years had a licence to keep a public house in another parish, was quite an immaterial circumstance; for by 26 *Geo.* 2. c. 31. *sect.* 3. Such licence was absolutely null and void, with regard to all other places. [See page 27.] The affidavits on both sides being then all distinctly read, it appeared upon the whole matter, that these two justices had acted in this affair, with fairness, impartiality, candor, and

## Alehouses.

justice; that they really and sincerely thought both the man and the house improper to be licensed; and they had very good and sufficient reasons for so thinking and determining. Whereupon their counsel concluded with praying that the rules made upon them might be discharged with *full costs*.—The main tendency of the arguments of the counsel in support of these rules was, to shew that the refusal to grant this licence to *Day*, arose from partiality to Mr. *Barker* the lord of the manor, who was the proprietor (the landlord) of the *other* publick house already established in the parish.

Lord *Mansfield* once more declared, that this court had no power or claim, to review the reasons of justices of peace, upon which they form their judgments in granting licences, by way of appeal from their judgments, or over-ruling the discretion intrusted to them. But if it clearly appears, that the justices have been *partially*, *maliciously*, or *corruptly* influenced in the exercise of this discretion, and have consequently abused the trust reposed in them, they are liable to prosecution by indictment or information, or even possibly by action, if the malice be very gross and injurious. If their judgment is wrong, yet their heart and intention pure, God forbid that they should be punished. And he declared that he should always lean towards favouring them, unless partiality, corruption, or malice shall *clearly* appear.—The present question therefore only is, whether these gentlemen have been guilty of any *partiality* or *malice*, (for corruption is not pretended) in the refusal of this licence.—Then he went minutely and accurately through all the particulars both of the charge and of the defence. And he thought that upon the first and original motion, the justices appeared to have been mistaken in the grounds of their refusal, in that they fixed it upon the want of the minister's and churchwardens signing; which they judged to be requisite by the 26 *Geo. 2. c. 31.* when it was not. However, in this, they were not *criminal*, though they were *mistaken*. And at *that* time, they had no personal objection to *Day*. And therefore it was, from all that *then* appeared, reasonable to expect that, upon enlarging the rule, they would at their next meeting grant the licence; which they had before refused, upon a mistake, of which they were subsequently informed. But since this, and antecedent to such next meeting, there are come out several strong *personal* objections to *Day* himself, which these justices were the proper judges of; namely, his keeping and having long kept a house for publicly retailing ale, wine and spirituous liquors, without being licensed thereto; his having been twice convicted of selling spirituous liquors, without a licence; his suffering a day-labourer to drink a whole day in his house, in harvest-time, and afterwards vindicating it; his having been charged with a fraud upon oath; besides an allegation in one of the affidavits, that two notorious highwaymen and robbers appeared at least to have used his house as a public house, if they enjoyed no other and more particular kind of harbour and protection in it. And in respect to the house, the justices now swear that they are clearly of opinion, that one is sufficient. And they likewise clear themselves, by the most solemn assertions in their affidavits,

of

of all *criminal* imputation. Therefore he concluded with declaring it as his opinion, that there was no sufficient foundation for a criminal charge against these justices.—Mr. justice *Denison* concurred. He also expressly allowed the discretionary power of the justices in granting licences, without appeal from their judgments, or having their just and honest reasons reviewed by any body. But yet an improper and unjust exercise of their discretion, he said, ought to be under controul. But it must be a clear and apparent partiality, or wilful misbehaviour, to induce the court to grant an information; not a mere error in judgment. And here is certainly no clear and apparent partiality, or wilful misbehaviour, in these justices. Therefore the rules ought to be discharged.

Mr. justice *Foster* concurred in the general principle, before laid down; and he thought there was no evidence of partiality, malice or corruption, in the present case. He declared against increasing the number of public houses, and gave several strong reasons against it; and therefore he thought the justices far from being to blame, in having come to a resolution *not* to increase them. And he was satisfied that the justices had reason sufficient to refuse this particular licence; both with regard to the house, and also with regard to the man refused.—Mr. justice *Wilmot* concurred. He was very explicit, that the sole discretion of granting licences is in the justices of the division; and he moreover gave various reasons why it should be so. And this point, he observed, was admitted at the bar. Then the sole discretion being in them, the rule is invariable, that this court will never interpose to punish a justice of peace for a mere error in judgment. Therefore, even supposing them to have been mistaken from beginning to the end, yet there is no ground from any of the affidavits, to infer any *partiality*, *malice*, or *corruption*: There is not the least *fact*, whereupon sufficiently to found any such apprehension and belief even in the complainants: And the justices themselves do most solemnly deny it in their affidavits. *Per cur.* Both rules discharged with costs.—Lord *Mansfield*—There are two distinct reasons why we should give costs; one with regard to the person complaining; the other, with regard to the persons complained of. For it appears, upon the affidavits, that *Day* the person complaining has persevered in keeping this house without a licence; and it now appears that the justices who are complained of, have acted both honestly and legally in refusing to grant it, in a place where there was already a sufficiency.

On shewing cause why a rule should not be made absolute, for an information against a justice of peace for a misdemeanour in refusing to grant a licence to one *Francis Simes*, (who had been licensed for several preceding years) to sell ale, as usual; and afterwards convicting him, without any previous summons, for having sold it without a licence; it appeared that the pretended grounds, upon which this rule had been applied for and obtained, were either false or fallacious. The first was, that the only reason why the licence was refused him, was his declining to pay a sum of money (5*l.*) which was claimed of him upon a distinct and collateral account, and which he denied to be due from him: the payment of which sum of money was, as he alleged, insisted upon by the justice, as a condition

Information against a justice of peace, upon a charge of his refusing to grant a licence to sell ale, unless the man would first pay him a collateral and disputed debt, and then convicting him of selling



ale unlicen-  
sed, without  
any previous  
summons, was  
denied upon  
the merits ;  
but the justi-  
ces have no  
authority to  
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conditions ;  
and the com-  
plainant  
ought to al-  
lege his own  
innocence, to  
intitle him to  
make this ap-  
plication  
against the  
justice.

2 Bur. Rep.  
653. Mich.  
32 Geo. 2.  
B. R. Rex v.  
Athay, esq.

condition precedent to his granting the man a licence. The second pretended ground of the motion was, that the justice had convicted him of the offence, without any previous summons. As to the first, the court were unanimous that the allegation appeared to be false in fact ; but at the same time they declared explicitly, that justices of peace have no sort of authority to annex any such condition to the grant of their licences. As to the second, they esteemed it to be fallacious, as the fact came out upon shewing cause ; for the man was actually present before the justice (who had sent for him ; ) and was so far from offering to make any defence, that he rather seemed to apply for mercy ; declaring, however, that if the justice did convict him, he would not pay the penalty. Thirdly, the court observed that the man had not any where alleged, that he was innocent of the offence, which they thought it incumbent upon him to have done, to intitle himself to make this application against the justice of peace. Rule discharged.

*For other matters, see Brewers, Coopers, Excise, Fees, Inns and Innkeepers, Measures, Plate, Soldiers, Stamps, Wine.*

## Annuities.

**A**N annuity is a yearly payment of a certain sum of money granted to another in fee-simple, fee-tail, for life or years, charging the person of the grantor only ; if payable out of lands, it is properly called a rent-charge ; but if both the person and estate be made liable, as they most commonly are, then it is generally called an annuity. *Co. Lit.* 144. *b. Finch* 161. *1 Rol. Abr.* 226. *Doct. & Stud. Dial.* 2. c. 30.

**Stat. 4 Will. & Mar.** [*A. D.* 1692.] c. 3. *sect.* 8. “ In order to raise the sum of one million towards carrying on the war against *France*, any persons may contribute towards advancing the said sum at any time before 1 *May* 1693 ; for which the contributors are to have 10 *per cent.* till 24 *June* 1700, and then 7 *per cent.* during the lives of the persons named by such contributors ; and upon the death of every nominee, the share payable during his life, shall be divided among the contributors whose nominees shall be living ; and so from time to time the whole funds shall be divided among the contributors whose nominees survive, till there be but seven nominees living ; and then upon the death of each of the said seven nominees, a seventh part of the said yearly funds shall be answered to their majesties, their heirs and successors.” And by *sect.* 22. of this act, if the whole sum of one million be not advanced before the said 1st of *May*, any persons after that day, and before the 29th of *September* following, may advance any sums not exceeding in the whole, with what shall have been advanced

advanced before the said 1st of *May*, the sum of one million upon the terms following, *viz.* that every such person shall have for every 100*l.* a yearly annuity of 14*l.* for his own or any other life to be by him nominated, payable half-yearly.

And by *sect.* 12. "Contributors, upon demanding their half-yearly payments, unless the nominee appear in person, shall produce a certificate of his life, signed by the minister and churchwardens of the parish where he lives, on the day when the said half-yearly payment becomes due, if such nominee be within the realm; which certificate shall be made without fee, and filed in the office of receipt."

*Stat.* 5 *Will. & Mar. c. 5.* [*A. D.* 1693.] *sect.* 1, 2. "To supply the deficiency of the money intended to be raised by the preceding act, any persons may contribute towards advancing the sum of 118,506*l.* 5*s.* 10*d.* to make up the sum of one million intended to be advanced by the said act, upon the terms following, *viz.* Every person shall have for every 100*l.* by them advanced, an annuity of 14*l.* during the life of such person, or during any other life, to be nominated by him within six days after payment; which annuities shall be paid at the four usual feasts.

*Sect.* 4. "And to make the payment of the annuities more easy to the several contributors upon this and the said act of 4 *Will. & Mar. c. 3.* both upon the terms of survivorship, and the annuity of 14*l.* *per centum*; Be it enacted, that every contributor upon this or the former act, his, or her executors, administrators, or assigns, upon their demanding any half-yearly or quarterly payment of his, her, or their respective shares of either of the said funds (unless the nominee appears in person at the said receipt) shall produce a certificate of the life of his, her, or their respective nominee, signed by the minister and churchwardens of the parish where such nominee shall be then living, as by the said act is appointed; or otherwise it shall and may be lawful to and for every contributor, his or her executors, administrators or assigns, at his, her, or their election, to make oath of the truth of his, her, or their respective nominee's life, upon the day when the said payments shall become due, before any one or more justices of the peace of the respective county, riding, city, town, or place wherein such person at the time of making the said oath shall reside (which oath he or they are impowered to administer); and the said justice or justices shall make a certificate thereof, for which oath and certificate no fee or reward shall be required; and the said certificate shall be filed in the said office of receipt of the *Exchequer*. And if any person shall be guilty of a false oath, or forging any certificate, touching the premises, and be thereof lawfully convicted, he shall incur the pains and penalties to be inflicted upon persons who commit wilful perjury or forgery."

*Stat.* 2 & 3 *Ann.* [*A. D.* 1703.] *c. 3. sect.* 9. "For raising 1,018,867*l.* 18*s.* 6*d.* for carrying on the war, and other her majesty's occasions, any persons may pay money into the *Exchequer* for purchasing annuities for 99 years, from the 25th of *March* 1704, at the rate of 150*l.* for 100*l.* *per an.*"

And

And by *sect. 10.* of said act, "Any persons, for raising a farther sum of 300,000*l.* for carrying on the war, and other her majesty's occasions, may pay money into the *Exchequer* for purchasing any annuity for one life, at the rate of 9 years purchase; for two lives at eleven years; and three lives at twelve years purchase; or for the term of 99 years at 15 years purchase.

Contributors to produce a certificate of the life of nominees, &c. signed by the minister and churchwardens without fee; otherwise to make oath of nominee's life.

Justices to make a certificate thereof, &c. Penalty on person guilty of a false oath, or forging certificate, &c.

*Sect. 23.* "And to the intent and purpose, that all deceits in receiving any payment upon any of the said annuities to be purchased for life or lives as aforesaid, may be prevented; Be it enacted by the authority aforesaid, that every contributor for any of the said annuities for life or lives, his or her executors, administrators or assigns, upon his or her demanding of any quarterly payment, upon such his or her annuity (unless the nominee appear in person at the said receipt) shall produce a certificate of the life of his or her respective nominee, signed by the minister and churchwardens of the parish where such nominee shall be then living, upon the day when the said quarterly payment shall become due (if such nominee shall be then residing in the kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*,) which certificate the said minister and churchwardens are hereby required to make without fee or reward; or otherwise it shall and may be lawful to and for every contributor, his or her executors, administrators and assigns, at his, her or their election, to make oath of the truth of his, her or their respective nominee's life, upon the day when the said payment shall become due, before any one or more justices of the peace of the respective county, riding, city, town, or place, wherein such person, at the time of making the said oath, shall reside; which oath he or they are hereby impowered to administer: And the said justice or justices shall make certificate thereof, for which oath and certificate no fee or reward shall be received; and the said certificates shall be filed in the said office of the receipt of *Exchequer*: And if any person shall be guilty of a false oath, or forging any certificate, touching the premises, and be thereof lawfully convicted, he or she shall incur the punishment to be inflicted upon persons who commit wilful and corrupt perjury."

4 An. c. 6.

*Stat. 4 Ann. c. 6. [A. D. 1705.] sect. 25.* "For raising 2,855,761*l.* 16*s.* 2*d.* for carrying on the war, and other her majesty's present occasions, any persons may contribute for purchasing annuities for 99 years from 25th *March* 1706, at the rate of 15½ years purchase, amounting to 155*l.* for 10*l.* *per ann.* payable at the four most usual feasts."

Annuities assignable,

and entry to be made, &c.

*Sect. 28.* "And be it further enacted, that it shall and may be lawful to and for any contributor or contributors, his, her, or their executors, administrators or assigns, at any time or times, during the continuance of his, her, or their term, estate or interest of and in any annuity to be purchased upon this act, by any writing under hand and seal, or by his or her last will in writing, to assign or devise such annuity, or any part thereof, or any interest therein, to any person or persons whatsoever, and so *toties quoties*, and no such assignment to be revocable, so as an entry or memorandum

random of such assignment or will be made, in books to be kept for that purpose in the said office of the auditor of the receipt, within the space of three months after such assignment or death of the devisor, and that upon producing such assignment or will, or probat thereof in the said office of receipt, to be entred, as aforesaid, the party so producing the same, shall bring therewith an affidavit taken before one or more of her majesty's justices of the peace of the due execution of the said assignment or will; which affidavit shall be severally filed in the said office, which said entry or memorandum, the proper officers in the said receipt of *Exchequer*, are hereby required to make accordingly, and to file the said affidavits; and in default of such assignment or devise by deed or will, the interest of such contributor shall go to his or her executors or administrators."

*Affidavits to be filed.*  
*In default of devise, interest to go to executors, &c.*

**Stat. 5 Ann. c. 19.** [*A. D.* 1706.] *sect.* 15. "Natives or foreigners may pay into the *Exchequer* sums not exceeding 1,155,000*l.* for purchasing annuities payable for 99 years, from the 25th of *March* 1707, at the rate of sixteen years purchase, *viz.* 160*l.* for every annuity of 10*l.* per ann. payable at the four most usual feast-days."

*5 Ann. c. 19.*

*sect.* 19. "And be it further enacted by the authority aforesaid, that all and every contributor and contributors upon this act, duly paying the consideration or purchase money, at the rate aforesaid, at or before the respective days or times in this act limited in that behalf, for any such annuity, or annuities as aforesaid, or such as he, she or they shall appoint, his, her or their respective executors, administrators, successors and assigns, shall have, receive and enjoy, and be entitled, by virtue of this act, to have, receive and enjoy the respective annuity and annuities so to be purchased, out of the monies by this act appropriated or appointed for the payment thereof, during the said whole term of ninety-nine years, as is above-mentioned; and that all and every such purchasers, their executors, administrators and assigns respectively, shall have good and sure estates and interests in the several annuities, so by them to be purchased according to the tenor and true meaning of this act, and that all the said annuities to be purchased upon this act, and every of them, during the term aforesaid, shall be free from all taxes, charges and impositions whatsoever."

*Contributors paying, &c. to enjoy sure estates in annuities purchased.*

**Stat. 6 Ann. c. 5.** [*A. D.* 1707.] *sect.* 8. "Natives or foreigners may pay into the *Exchequer* sums not exceeding 640,000*l.* for purchasing annuities payable for 99 years, from the 25th of *March* 1708, at 16 years purchase, *viz.* 160*l.* for every annuity of 10*l.* payable at the four most usual feast-days."

*6 Ann. c. 5;*

*sect.* 15. "And be it further enacted, that it shall and may be lawful to and for any contributor or contributors, his, her or their executors, administrators, successors or assigns, at any time or times, during the continuance of his, her or their term, estate or interest of, and in any annuity to be purchased upon this act, by any writing under his, her or their hands and seals, or under the common seal of a corporation, or by his,

*Annuities assignable, &c.*

## Annuities.

her or their last will in writing, to assign, or devise such annuity, or any part thereof, or any interest therein, to any person or persons whatsoever, and so *toties quoties*, and no such assignment to be revokable, so as an entry or memorandum of such assignment or will be made in books to be kept for that purpose in the said office of the auditor of the receipt, within the space of three months after such assignment, or death of the devisor; and that upon producing such assignment, or will, or probat thereof in the said office of receipt, to be entred, as aforesaid, the party so producing the same shall bring therewith an affidavit taken before one or more of her majesty's justices of the peace, of the due execution of the said assignment or will, which affidavit shall be severally filed in the said office; which said entry or memorandum the proper officers of the said receipt of *Exchequer* are hereby required to make accordingly, and to file the said affidavits; and in default of such assignment or devise by deed or will, the interest of such contributor shall go to his or her executors or administrators."

30 Geo. 2.  
c. 19.

**Stat.** 30 Geo. 2. c. 19. [*A. D.* 1757.] *sect.* 31. "Contributors to the sum of three millions mentioned in this act are to have annuities of 3 *per cent. per ann.* transferrable at the bank, and redeemable by parliament; and for every hundred pounds subscribed an annuity for life of 1*l.* 2*s.* 6*d.* payable at the *Exchequer* half-yearly, on the 5th day of *January* and 5th day of *July*, and assignable; for paying of which life annuities 33,750*l.* is to be reserved yearly out of the monies arising by act."

On demand-  
ing the an-  
nuity, certifi-  
cate from the  
minister and  
churchward-  
ens to be  
produced of  
the life of the  
nominee, if  
resident in  
England; or  
the same to be  
certified, on  
oath, before a  
justice; and  
in places ex-  
traparochial.

*sect.* 62. "And for preventing all frauds in receiving any share of the yearly fund hereby appointed to be set apart, every contributor, his or her executors, administrators, assigns, or agents, upon demand of any half-yearly payment of his or her respective shares of the said yearly fund (unless the nominee appears in person at the said receipt) shall produce a certificate of the life of his, her or their respective nominee, signed by the minister and churchwardens of the parish where such nominee shall be then living, upon the day when the said half-yearly payments shall become due (if such nominee be then residing in that part of *Great Britain* called *England*, dominion of *Wales*, or town of *Berwick upon Tweed*;) or otherwise, it shall and may be lawful to and for every such contributor, or his or her executors, administrators or assigns, at his or her election, to make oath of the truth of his, her or their respective nominee's life upon the day when the said half yearly payment shall become due, before one or more justices of the peace of the respective county, riding, city, town or place wherein such person, at the time of making such oath shall reside; and in like manner every such contributor, his or their executors, administrators, assigns, or agents, whose nominee shall reside in any town or place, being extraparochial, upon the day where any of the said half-yearly payments shall become due, shall make a like oath before any such justice or justices aforesaid, of the life of such nominee on that day (which oath the said justice or justices of the peace are hereby impowered to ad-  
minister)

minister) and such justice or justices shall make a certificate thereof; for which oath and certificate no fee or reward shall be demanded or paid.

*Stat.* 68. “ And for preventing all frauds and abuses in or about the stand- Penalty of  
ing orders for paying the said annuities, or any assignments thereof, or the forging or  
receiving the annuities due or to grow due thereon; Be it enacted by the au- counterfeiting  
thority aforesaid, that if any person or persons whatsoever shall forge or certificates,  
counterfeit, or procure to be forged or counterfeited, or knowingly or &c. or of  
wilfully act or assist in the forging or counterfeiting any certificate or certifi- fraudulently  
cates to be given up by such cashier or cashiers, or any order or orders to be receiving an-  
made forth in lieu thereof, in pursuance of this present act, or any assign-  
ment or assignments of such order or orders, or of the annuities payable  
thereon, or of any receipt or discharge to the *Exchequer*, for the annuities  
due or to grow due on any such order or orders, or of any letter of attor-  
ney, or other authority or instrument, to transfer, assign, alien or convey  
any such order or orders, or to receive the annuities due or to grow due  
thereon, or any part thereof; or shall forge or counterfeit, or procure to  
be forged or counterfeited, or knowingly or wilfully act or assist in the  
forging or counterfeiting any the name or names of any of the proprietors  
of any such order or orders, in or to any such pretended assignment or  
assignments, receipt, letter of attorney, certificate, instrument or autho-  
rity; or shall falsely and deceitfully personate any true and real proprietor  
or proprietors of any of the said orders, and thereby assign, or endeavour  
to assign, any of the said orders, or receive or endeavour to receive the  
money of such true and lawful proprietor, as if such offender were the  
true and lawful owner thereof; then, and in every such case, all and every  
such person and persons being thereof lawfully convicted in due form  
of law, shall be adjudged guilty of felony, and shall suffer death as in  
cases of felony, without benefit of clergy.”

*Stat.* 9 *Geo.* 1. c. 12. [*A. D.* 1722.] *stat.* 1. “ The proprietors of the 9 *Geo.* 1.  
standing orders made forth in pursuance of the acts 6 *Geo.* 1. c. 11. and c. 12.  
8 *Geo.* 1. c. 20. may, by assignment indorsed on their orders, assign or  
transfer their interest.

*Stat.* 4. “ And for the preventing all frauds and abuses in or about the  
said standing orders, or any assignments thereof, or the receiving the an-  
nuities due or to grow thereon; Be it enacted by the authority aforesaid,  
that if any person or persons whatsoever, from and after the second day of  
*April* one thousand seven hundred and twenty-three, shall forge or coun-  
terfeit, or procure to be forged or counterfeited, or knowingly or wil-  
fully act and assist in the forging or counterfeiting any order or orders  
made forth, or to be made forth in pursuance of any the before-ment-  
ioned acts, or of this present act, or any assignment or assignments of such  
order or orders, or of the annuities payable thereon, or of any receipt or  
discharge to the *Exchequer* for the annuities due or to grow due on any  
such standing order or orders, or of any letter of attorney, or other au-  
thority or instrument, to transfer, assign, alien, or convey any such order  
or orders, or to receive the annuities due or to grow due thereon, or any

## Annuities.

Counterfeit-  
ing orders,  
felony.

part thereof, or shall forge or counterfeit, or procure to be forged or counterfeited, or knowingly or wilfully act or assist in the forging or counterfeiting any the name or names of any of the proprietors of any such order or orders in or to any such pretended assignment, receipt, letter of attorney, instrument, or authority, or shall knowingly and fraudulently demand, or endeavour to have or receive any such annuity or annuities, or any part thereof, by virtue of any such forged or counterfeited receipt, letter of attorney, instrument, or authority, or shall falsely and deceitfully personate any true and real proprietor or proprietors of any of the said order or orders, and thereby assigning, or endeavouring to assign, any of the said order or orders, or receiving, or endeavouring to receive the money of such true and lawful proprietor, as if such offender were the true and lawful owner thereof; then and in every or any such case, all and every such person and persons (being thereof lawfully convicted in due form of law) shall be adjudged guilty of felony, and shall suffer as in cases of felony, without benefit of clergy."

4 Geo. 2.  
c. 9.

**Stat.** 4 Geo. 2. c. 9. *sect.* 9. "If any person shall counterfeit any order to receive the annuities mentioned in the said act, or power to transfer the same, or the name of the proprietor, or shall personate such proprietor, he shall be guilty of felony without benefit of clergy." *But the said annuities were directed to be redeemed by 25 Geo. 2. c. 25. sect. 19.*

9 Geo. 2.  
c. 34.

**Stat.** 9 Geo. 2. c. 34. *sect.* 1. "Any persons, natives or foreigners may pay into the *Exchequer* any sums not exceeding 600,000*l.* for the purchase of annuities of 3*l.* *per ann.* for every 100*l.* redeemable by parliament. And by *sect.* 8. of this act, forging or counterfeiting orders, &c. to receive those annuities, is made felony without benefit of clergy. *But by stat.* 25 Geo. 2. c. 27. *those annuities are converted into a joint-stock of annuities transferrable at the Bank.*

## Appeal.

**A**PPEAL, (*Appellum*, from the Fr. *appel* or *appeller*, to call, because *appellans vocat reum in judicium*) has two significations; one is, removing a cause from an inferior to a superior court, as in the stat. 24 Hen. 8. c. 12. and 1 El. c. 1. The other kind of appeal is an accusation of another in legal form, for a crime by him committed. *Co. Lit.* 123. b. 287. b. It signifies in our common law, as much as *accusatio* with the civilians; for as in the civil law, cognizance of criminal causes is taken either upon *inquisition* and *denunciation*, or *accusation*; so in ours cognizance is taken of criminal causes upon indictment or appeal; indictment comprehending both *inquisition* and *denunciation*. An *accusation*, or *appeal*, is a lawful declaration of another man's crime (which by *Brañon* must

must be felony at the least) before a competent judge, by one that setteth his name to the declaration, and undertakes to prove it, upon the penalty that may ensue thereon. *Cowell*, edit. 1727.

There were anciently several kinds of appeals, which seem obsolete at this day; as appeals of treason, which might be sued before the parliament and other courts of law, as well as before the constable and marshal, and were determinable by battle. 2 *Inst.* 132. *Bract.* 118. 2 *Hawk.* P. C. 161.

But appeals before the parliament are taken away by 1 *H.* 4. c. 4. and those before other law courts are become obsolete.

An appeal of death, which is now chiefly in use, is a vindictive action which the law gives a wife against her husband's murderer, and to the heir at law against one who kills his ancestor, which being the suit of the subject, the king cannot pardon. 1 *Bac. Abr.* 122.

By *Magna Charta* (*Stat.* 9 *H.* 3. c. 34.) *No man shall be taken or imprisoned upon the appeal of a woman for the death of any other than of her husband.* Who may have an appeal of death.

It being alleged by some, and especially by *Treby* Ch. J. that an appeal was a revengeful odious prosecution, and therefore deserved no encouragement; on which occasion *Holt* with great vehemency and zeal, said, that he wondered any *Englishman* should brand an appeal with the name of an odious prosecution; that for his part he looked upon it to be a noble prosecution, and a true badge of *English* liberties, and referred to the statute of *Gloucester*, and the comment thereupon in 2 *Inst.* 12 *Mod.* 375.

At the common law, before the statute 9 *Hen.* 3. a woman as well as a man might have had an appeal of death of any of her ancestors, and therefore the son of a woman shall at this day have an appeal, if he be heir at the death of the ancestor, for the son is not disabled, but the mother only, for the statute says, *propter appellum femine.* 2 *Inst.* 68.

An infant may bring an appeal, but he must prosecute it by guardian, and he shall be nonsuited upon such guardian's non-appearance at a day wherein he is demandable; but if the infant comes into court, and says, that he will relinquish the suit, and the guardian insists to continue it, the court may discharge him and assign another. *Moor* 461. *H. P. C.* 183.

But an idiot, or person born deaf and dumb, or one attainted of treason or felony, or outlawed in a personal action, so long as such attainder or outlawry continues in force, cannot bring any appeal whatsoever. 2 *Hawk.* 168. *H. P. C.* 183. 2 *Hawk.* P. C. 162.

If the wife take another husband either before or pending the appeal, she puts an end to it for ever; and if she marry after judgment, she cannot pray execution. 2 *Hawk.* P. C. 164.

By the statute of *Gloucester*, 6 *Ed.* 1. cap. 9. which is construed to extend only to appeals of death, *an appeal shall not be abated for default of fresh suit, if the party sue within the year and day after the deed done*; the computation whereof, as the law is now settled, shall be made not from the day when the wound was given, but from the day when the party died; When, where, and in what manner an appeal of death must be prosecuted.



## Appeal.

died; also the year and day shall be from the beginning of the day, and not from the precise time when the death happened, because regularly no fraction shall be made of a day. 2 *Inst.* 320. 3 *Inst.* 53. 4 *Co.* 42. b. 2 *Hawk. P. C.* 162.

All appeals are local actions, and regularly to be tried in the county wherein the offence was committed. *Dyer* 38.

But it is said, that if a person had died in one county of a wound given in another, the appeal might be brought in either of them, and the trial be at the bar by a jury returned from the body of each of those counties; but since the 2 & 3 *Ed.* 6. cap. 2. which enacts, *that the party may sue an appeal in the county where the person feloniously stricken, &c. shall die, &c.* it seems the trial may be from such county only. 2 *Hawk. P. C.* 163.

Appeals are commenced either by writ, which is an original out of *Chancery*, returnable to the *King's Bench* only, or by bill. 2 *Hawk. P. C.* 155.

Appeals by bill may be sued in the *King's Bench* against any person in actual custody, or by having bail filed for him there. *Cro. Eliz.* 605.

If a man be brought into court either by a void writ of appeal, or by a voidable one, which is afterwards abated, he may be arraigned by bill in *custodia marischalli*. 2 *Hawk. P. C.* 155. *Skinner* 634.

A bill of appeal lies before justices of *Eyre*, and before justices specially assigned, and before justices of gaol-delivery, and for the same reason, as some say, before justices of assize, who by the purport of several statutes are authorized to deliver goals without any special commission against any prisoner in the gaol, which they are to deliver, or, as it is generally holden, against a person whom they have bailed. See 2 *Hawk. P. C.* 156.

Where an appeal of death may be abated, or not.

The writ in an appeal is an original issuing out of *Chancery*, returnable into the *King's Bench* only; before the return thereof the court of *Chancery* only can supersede or set it aside, where it appears to have issued *errone**nice* [erroneously] or *improvidē* [improvidently] it, by some error extrinsic to the writ itself; but for any error or defect on the face of it, it may be quashed after it is returned, it into the *King's Bench*. *Abr. Eq.* 416.

The court *ex officio* will quash the writ for apparent faults appearing on the face of the writ; as where the sense is defective for want of a material word, or where it wants those words of art which the law has appropriated for the description of the offence. 2 *Hawk. P. C.* 184.

So if, in a writ of appeal brought by husband and wife, the conclusion is in the name of the wife only; or if the writ omits either the name of baptism, or surname of the appellant or appellee, being under the degree of nobility, it shall be abated. 2 *Hawk. P. C.* 185.

Also the court will abate the writ when the declaration varies from the writ in some material point, either as to the reign of the king, or as to the county wherein the fact is laid, &c. 2 *Hawk. P. C.* 184.

On the exception of the party the court will abate the writ; as if he shews that there are not fifteen days between the *teste* and return of the writ;

writ; but this he must do before he has pleaded in chief, without taking advantage of it. 1 *Salk.* 63. 1 *Vent.* 73.

If the writ or declaration mistake either the name of baptism, or surname, or addition of the appellant or appellee, the appellant before imparlance may plead it in abatement. See 2 *Hawk. P. C.* 184.

But the omission or insufficiency of an addition, are salved by the appellee's coming in and pleading, without taking any advantage of such defect, but not by his bare appearance. 2 *Hawk. P. C.* 190.

The defendant may at the same time plead as many pleas in abatement as he pleases, together with matter in bar, and the general issue, if he can do it without repugnancy; and if he be suffered to plead any such plea without pleading with it the general issue, the finding it against him doth not conclude him from pleading the general issue afterwards. 2 *Hawk. P. C.* 191, 192.

A woman *poisoned* her husband, which is treason by the statute 31 *H.* 8. the heir brought an appeal of *murder* against his mother; adjudged, that it did not lie because it was not murder, but treason, and the greater offence drowns the less. *Dyer* 50.

There were *three brothers*, and the *middle brother* was killed, the eldest died within the year, and no appeal brought, it was a question, whether the younger should have an appeal; it was not resolved, tho' *Fortescue*, 20 *H.* 6. 43. held he should not, but the 16 *H.* 7. 15. 'tis held he should. *Dyer* 69.

*Appeal of murder* brought by the *wife*; the case was, Sir *Charles Blunt* came to the house of *Clements* the deceased, and demanded a *dog*, and in entering the house being opposed by *Clements*, they fought, and *Clements* was killed; and this appearing upon evidence to the coroners inquest, the question was, whether the depositions of those witnesses should be given in evidence upon this appeal? It was objected, that they should not, because not between the same parties, for the coroner is an officer for the King, but the appeal is between party and party. 2 *Rel. Rep.* 460.

By common law a defendant may recover damages for a false and malicious appeal, against the appellant and his abettors, by a writ of conspiracy or action on the case. *Co. Lit.* 283.

Punishment  
for a false ap-  
peal.

And by stat. *Westm.* 2. cap. 12. it is enacted as followeth, " For as much as many thro' malice, intending to grieve others, do procure false appeals to be made of homicides and other felonies, by appellors having nothing to satisfy the king for their false appeal, nor to the parties appealed for their damages; it is ordained, that when any being appealed of felony surmised upon him, doth acquit himself in the king's court in due manner, either at the suit of the appellor or our lord the King, the justices before whom the appeal shall be heard, shall punish the appellor by a year's imprisonment, and the appellor shall nevertheless restore to the parties appealed their damages, according to the discretion of the justices, having respect to the imprisonment or arrestment that the party appealed hath sustained by reason of such appeals, and to the infamy that they have incurred by the imprisonment or otherwise; and shall nevertheless make

make a grievous fine unto the King; and if peradventure such appellor be not able to recompence the damages, it shall be inquired by whose abetment by malice the appeal was commenced, if the party appealed desire it; and if it be found by the same inquest, that any man is an abettor thro' malice, he shall be distrained by a judicial writ at the suit of the party appealed, to come before the justices; and if he be lawfully convicted of such malicious abetment, he shall be punished by imprisonment and restitution of damages, as before is said of the appellor."

Mr. serjeant *Hawkins* says, there is no doubt but that by the express words of the statute, wherever the appellant or his abettors are by the purport thereof to render damages to an appellee, they are also to be fined to the King, and imprisoned for a year. Also it seems clear from the general purport of the books, that an appellant appearing to have brought an ill-grounded appeal, whether of felony or maihem, shall be fined in many cases wherein he is not liable to render damages by the statute above-mentioned; as where he is nonsuit, either against all or part of the appellees only, whether after, or as some have holden, before appearance; or whether the suit abates through the default of the appellant in wilfully suing by a wrong name or a vitious writ, &c. and even a feme covert suing an appeal known by her to be groundless, as for the death of a husband whom she knows to be alive, shall be fined. But it is certain that where a writ abates by the act of God, or for any other cause no way imputable to the appellant, he shall neither be fined nor amerced. Also it is certain, that an infant in no case is to be fined for a false appeal; but some have holden that he may be amerced, which is contradicted by others, who say that an infant in no case can be amerced. 2 *Hawk. P. C.* 204. For more learning on this subject, see 1 *Bac. Abr.* 2 *Vin. Abr.* and *Cunningham's Law Dict. tit. Appeal.*

## Apples and pears.

1 Ann. Stat. 1. c. 15. **STAT.** 1 Ann. Stat. 1. c. 15. [*A. D.* 1701. intituled,] "An act to ascertain the water measure of fruit."

"Whereas apples and pears are frequently sold by measure, commonly called *Water Measure*, the contents whereof are very uncertain, and not ascertained by law: And whereas the uncertainty thereof occasions many frivolous and vexatious suits between the buyer and seller: Be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the measure, commonly called *Water Measure*, shall be round, and in diameter eighteen inches and an half within the hoop, and eight inches deep, and no more, and so in proportion for any greater or lesser measure; and that every

Water measure described.

every measure, commonly called *Water Measure*, by which apples and pears are sold, shall be heaped as usually; and that whosoever shall sell or buy any apples or pears by or with any other measure, shall forfeit for every such offence ten shillings, one half to the informer, the other half to the poor of the parish where such offence shall be committed, being thereof lawfully convicted by the oath of one sufficient witness before any justice of the peace, mayor, or other head officer of the county, city, or town corporate, where the said offence shall be committed, who by virtue of this act shall have power to administer an oath in that behalf, which said sum of ten shillings shall be levied by warrant from the said justice of the peace, mayor, or other head officer, by the petty constable of the same parish, of the goods and chattels of such offenders, by way of distress and sale of the offender's goods, rendering to the offender or offenders the overplus.

II. " Provided, that this act, or any thing therein contained, shall not extend to any measures sealed and allowed by the masters, wardens, assistants, and commonalty of the freemen of the art or mystery of the fruiterers of the city of *London*, to be used in the measuring of fruit sold by them in the said city, and liberties thereof, or within three miles distant from the same city.

Fruit sold by water measure shall be heaped.  
Penalty.

Not to extend to sealed measures allowed by the fruiterers company of London.

## Apprentices.

**A**PPRENTICE, *apprentitius*, (French *apprentis*, from *apprendre*, to learn; whence the French *apprentissage*; and our *apprenticeship*) signifies with us one that is bound in word or writing, to serve another man of trade for certain years, upon condition that the artificer or master shall in that mean time endeavour to instruct him in his art or mystery. *Smith de Rep. Ang. lib. 3. cap. 8.* saith, they are a kind of bondmen, differing only, that they are servants by covenant, and for a time. Barristers at law were heretofore called *apprentices of the law*, in Latin *apprentitii juris nobiliores*. So saith Mr. *Seldon* in his notes upon *Fortescue*, p. 3. and so the learned Mr. *Plowden* styled himself. Sir *Henry Finch*, in his *Nomotechnia*, gives himself the same title; and Sir *Edward Coke*, 2 *Inst. fol. 564.* holds, that *apprentitii legis* are called *homines consilarii*, & *in lege periti*, and in another place—*apprentices and other counsellors of law*. As to the word *apprentitius*, as it signifies a young person, bound by indentures to a master, who upon such covenants is to teach him his mystery or trade; the oldest authority seems to be from a charter, dated 12 *Ed. 3.* recited in *Kennet's Parochial Antiquities*, p. 449. at least we have met with no mention of them till the beginning of the next reign. Thus, *Henry de Knighton*, sub ann. 1381. *apprentitii quoque relietis magistris suis illuc accurrebant.* And *Tho. Walsingham* in *Ric. 2. p. 103. de Londonio multi apprentitii, plures servi, sumptis albis capitiis, invitis magistris & dominis sunt profecti.* Vide *Seldne's Notes on Fortescue*, p. 2. *Orig. Jurid. fol. 143. a.* and the statute of *Champerty*, 33 *Ed. 1.* *Cowell*, edit. 1727.

Stat. 5. El. c. 4. **Stat. 5 Eliz. c. 4.** [*A. D. 1562. intituled,*] “An act containing divers orders for artificers, labourers, servants of husbandry and apprentices.”

Husbandmen may take apprentices. **Sett. 25.** “And for the better advancement of husbandry and tillage, and to the intent that such as are fit to be made apprentices to husbandry, may be bounden thereunto, (2) Be it enacted by the authority of this present parliament, that every person being an householder, and having and using half a plough-land at the least in tillage, may have and receive to an apprentice any person above the age of ten years, and under the age of eighteen years, to serve in husbandry, until his age of one and twenty years at the least, or until the age of twenty-four, as the parties can agree; and the said retainer, and taking of an apprentice, to be made and done by indenture.

Every householder dwelling in any town corporate may take an apprentice for seven years. **Sett. 26.** “And be it further enacted, that every person being an householder, and twenty-four years old at the least, dwelling or inhabiting, or which shall dwell and inhabit in any city or town corporate, and using and exercising any art, mystery, or manual occupation there, shall and may after the feast of Saint *John Baptist* next coming, during the time that he shall so dwell or inhabit in any such city or town corporate, and use and exercise any such art or mystery, or manual occupation, have and retain the son of any freeman, not occupying husbandry, nor being a labourer, and inhabiting in the same, or in any other city or town that now is, or hereafter shall be and continue incorporate, to serve and be bound as an apprentice, after the custom and order of the city of *London*, for seven years at the least, so as the term and years of such apprentice do not expire or determine afore such apprentice shall be of the age of twenty-four years at the least.

Merchants, &c. may take no apprentices, but such whose parents may dispend 40s. of freehold. **Sett. 27.** “Provided always, and be it enacted, that it shall not be lawful to any person dwelling in any city or town corporate, using or exercising any of the mysteries or crafts of a merchant trafficking by traffick or trade into any the parts beyond the sea, mercer, draper, goldsmith, ironmonger, imbroiderer, or clothier, that doth or shall put cloth to making and sale, to take any apprentice or servant to be instructed or taught in any of the arts, occupations, crafts or mysteries which they or any of them do use or exercise, except such servant or apprentice be his son; (2) or else that the father and mother of such apprentice or servant shall have, at the time of taking such apprentice or servant, lands, tenements, or other hereditaments, of the clear yearly value of forty shillings of one estate of inheritance, or freehold at the least, to be certified under the hands and seals of three justices of the peace of the shire, or shires where the said lands tenements, or other hereditaments, do or shall lie, to the mayor, bailiff, or other head officers of that city or town corporate, and to be inrolled among the records there.”

Whom they may have for their apprentices who dwell in market towns not incorporate. **Sett. 28.** “And be it further enacted, that from and after the said feast of *St. John the Baptist* next, it shall be lawful to every person being an householder, and four and twenty years old at the least, and not occupying husbandry, nor being a labourer, dwelling or inhabiting, or that shall hereafter dwell or inhabit in any town not being incorporate, that now is, or hereafter shall be a market town, so long as the same shall be weekly used, and

and kept as a market-town, and using or exercising any art, mystery, or manual occupation, during the time of his abode there, and so using and exercising such art, mystery, or manual occupation, as aforesaid, to have in like manner to apprentice or apprentices, the child or children of any other artificer or artificers, not occupying husbandry, nor being a labourer, which now do, or hereafter shall inhabit or dwell in the same, or any other such market-town, within the same shire, to serve as an apprentice or apprentices, as is aforesaid, to any such art, mystery, or manual occupation, as hath been usually exercised in any such market-town, where such apprentice shall be bound in manner and form aforesaid."

8 Cok. 129.

*Stat.* 29. "Provided always, and be it enacted, that it shall not be lawful to any person, dwelling or inhabiting in any such market-town, using or exercising the feat, mystery or art of a merchant, trafficking or trading into the parts beyond the seas, mercer, draper, goldsmith, ironmonger, imbroiderer, or clothier, that doth or shall put cloth to making and sale, to take any apprentice, or in any wise to teach or instruct any person in the arts, sciences or mysteries last before-recited, after the feast of St. *John Baptist* aforesaid, except such servant or apprentice shall be his son; or else that the father and mother of such apprentice shall have lands, tenements, or other hereditaments at the time of taking such apprentice, of the yearly value of three pounds, of one estate of inheritance, or freehold at the least, to be certified under the hands and seals of three justices of the peace of the shire or shires, where the said lands, tenements or other hereditaments, do or shall lie, to the head officers or head officer of such market-town where such apprentice or servant shall be taken, there to be inrolled by such head officers always to remain of record."

What apprentices merchants, &c. dwelling in a market-town not corporate, may take. Cro. El. 723.

*Stat.* 30. "And be it further enacted, that from and after the said feast, it shall be lawful to any person using or exercising the art or occupation of a smith, wheel-wright, plough-wright, mill-wright, carpenter, rough mason, plaisterer, sawyer, lime-burner, brick-maker, bricklayer, tyler, slater, helier, tyle-maker, linnen-weaver, turner, cowper, miller, earthen potters, woollen weaver, weaving housewives or household cloth only, and none other cloth; fuller, otherwise called, tucker or walker, burner of oare and wood-ashes, thatcher, or shingler, wheresoever he or they shall dwell or inhabit, to have or receive the son of any person as apprentice in manner and form aforesaid, to be taught and instructed in these occupations only, and in none other, albeit the father or mother of any such apprentice have not any lands, tenements or hereditaments."

These Artificers may take apprentices whose parents may dispend no land.

*Stat.* 31. "And be it further enacted by the authority aforesaid, that after the first day of *May* next coming, it shall not be lawful to any person or persons, other than such as now do lawfully use or exercise any art, mystery or manual occupation, (2) to set up, occupy, use or exercise any craft, mystery, or occupation now used or occupied within the realm of *England* or *Wales*; except he shall have been brought up therein seven years at the least as an apprentice, in manner and form aforesaid; (4) nor to set any person on work in such mystery, art, or occupation, being not a workman at this day; (5) except he shall have been apprentice as is aforesaid; (6) or else have served as an apprentice, as is aforesaid, shall or

1 Lev. 249.  
2 Salk. 611.  
Carthew 162.  
3 Mod. 152.

None may use any manual occupation except he hath been apprentice to the same.

31 El. c. 5.  
3 Bull. 179.  
1 Roll. 10.  
2 Roll. 391.  
Stiles 223.

383. distillers will become a journey-man, or hired by the year; (7) upon pain that every person willingly offending or doing the contrary, shall forfeit and lose, for every default, forty shillings for every month.

12 Anne Stat. 2. c. 3. f. 1. 1 Lutw. 164. 2 Lev. 206. 8 Co. 129. 11 Co. 54. Cro. El. 737. Cro. Jac. 85, 178, 538. Cto. Car. 316, 347, 499, 516. Hob. 211, 183. Noy 5.

He that hath three apprentices must keep one journeyman. *Seet.* 33. "And be it further enacted by the authority aforesaid, that all and every person and persons that shall have three apprentices in any the said crafts, mysteries or occupations of a cloth-maker, fuller, and shearman, weaver, taylor or shoemaker, shall retain and keep one journeyman, and for every other apprentice above the number of the said three apprentices, one other journeyman, upon pain for every default ten pounds."

A proviso for the liberties of worsted-makers in Norwich and Norfolk. *Seet.* 34. "Provided always, that this act, nor any thing therein contained, shall not extend to prejudice or hinder any liberties heretofore granted by any act of parliament, to or for the company and occupation of worsted-makers and worsted-weavers within the city of *Norwich*, and elsewhere within the county of *Norfolk*, which liberties be in force until the beginning of this present parliament; any thing therein contained to the contrary in any wise notwithstanding."

14 & 15 H. 8. c. 3.

The punishment of him that refuseth to be an apprentice. *Seet.* 35. "And be it farther enacted, that if any person shall be required by any householder, having and using half a plough-land at the least in tillage, to be an apprentice, and to serve in husbandry, or in any other kind of art, mystery or science before expressed, and shall refuse so to do, that then upon complaint of such housekeeper made to one justice of the peace of the county where the said refusal is or shall be made, or of such householder inhabiting in any city, town corporate, or market-town, to the mayor, bailiffs, or head officer of the said city, town corporate, or market-town, if any such refusal shall there be, they shall have full power and authority by virtue hereof, to send for the same person so refusing: (2) and if the justice, or the said mayor or head officer, shall think the said person meet and convenient to serve as an apprentice in that art, labour science or mystery wherein he shall be so then required to serve; that then the said justice, or the said mayor or head officer, shall have power and authority by virtue hereof, if the said person refuse to be bound as an apprentice, to commit him unto ward, there to remain until he be contented, and will be bounden to serve as an apprentice should serve, according to the true intent and meaning of this present act. (3) And if any such master shall misuse or evil intreat his apprentice, or that the said apprentice shall have any just cause to complain; or the apprentice do not his duty to his master, then the said master or apprentice being grieved, and having cause to complain, shall repair unto one justice of peace within the said county, or to the mayor or other head officer of the said city, town corporate, market town, or other place where the said master dwelleth, who shall by his wisdom and discretion take such order and direction between the said master and his apprentice, as the equity of the cause shall require; (4) and if for want of good conformity in the master, the said justice of peace, or the said mayor or head officer cannot compound and agree the matter between him and his apprentice, then the said justice or

The remedy for the apprentice which is misused by his master, and for the master when the apprentice doth not his duty.

the said mayor or other head officer shall take bond of the said master, to appear at the next sessions then to be holden in the said county, or within the said city, town corporate, or market-town, to be before the justices or the said county, or the mayor or head officer of the said town corporate or market-town, if the said master dwell within any such; (5) and upon his appearance, and hearing of the matter before the said justices or the said mayor or other head officer, if it be thought meet unto them, to discharge the said apprentice of his apprenticeship, that then the said justices, or four of them at the least, whereof one to be of the *Quorum*; or the said mayor or other head officer, with the consent of three other of his brethren, or men of best reputation within the said city, town corporate or market-town, shall have power by authority hereof, in writing under their hands and seals, to pronounce and declare, that they have discharged the said apprentice of his apprenticeship, and the cause thereof; (6) and the said writing so being made and enrolled by the clerk of the peace, or town-clerk, amongst the records that he keepeth, shall be a sufficient discharge for the said apprentice against his master, his executors and administrators; the indenture of the said apprenticeship, or any law or custom to the contrary notwithstanding. (7) And if the default shall be found to be in the apprentice, then the said justices, or the said mayor or other head officer, with the assistance aforesaid, shall cause such due correction and punishment to be ministred unto him, as by their wisdom and discretions shall be thought meet.

Where an apprentice may be discharged of his apprenticeship.

*Sett.* 36. "Provided always, and be it enacted by authority of this present parliament, that no person shall, by force or colour of this estatute, be bounden to enter into any apprenticeship, other than such as be under the age of twenty-one years."

None shall be bound to be apprentices, but those which be under xxi. years of age.

*Sett.* 37. "And to the end that this estatute may from time to time be carefully and diligently put in good execution, according to the tenor and true meaning thereof, Be it enacted by authority of this present parliament, that the justices of peace of every county, dividing themselves into several limits, and likewise every mayor and head officer of any city or town corporate, shall yearly between the feast of St. *Michael* the archangel, and the nativity of our lord, and between the feast of the nativity of St. *John Baptist*, by all such ways and means as to their wisdoms shall be thought most meet, make a special and diligent enquiry of the branches and articles of this estatute, and of the good execution of the same, and where they shall find any defaults, to see the same severely corrected and punished, without favour, affection, malice or displeasure."

Assembly of the justices twice in the year for the due execution of this statute.

*Sett.* 38. "And in consideration of the pains and travel that the said justices of peace, and the said mayor and head officer shall take and sustain in and about the execution of this estatute, it is further ordained and enacted by authority of this present parliament, that every justice of peace, mayor or head officer, for every day that he shall sit in and about the execution of this estatute, shall have allowed unto him five shillings, to be allowed and paid unto him, or unto the said mayor or head officer, of the fines and forfeitures of the pains and penalties that shall be forfeited and due unto the queen's majesty, her heirs and successors, by force

The justices allowance for their pains.



## Apprentices.

of this estatute, in such manner and form as the said justices have been heretofore commonly paid for their coming and charges at the quarter-sessions; so that the sitting of the said justices or mayor, or head officer, be not at any one time above three days, and for the matters contained in this estatute."

Who shall have  
the forfeitures  
mentioned in  
this statute.  
Moor 886.  
1 Cro. 499.

Justices of  
peace, mayor,  
&c. may hear  
and determine  
all offences  
committed a-  
gainst this sta-  
tute. 31 El.  
c. 5.  
1 Salk. 370.

*Sec. 39.* "And be it enacted by authority aforesaid, that the one half of all forfeitures and penalties expressed and mentioned in this estatute, other than such as are expressly otherwise appointed, shall be to our sovereign lady the queen's majesty, her heirs and successors, and the other moiety to him or them that shall sue for the same in any of the queen's majesty's courts of record, or before any of the justices, of *Oyer and Terminer*, or before any other justices, or president and council before-remembered, by action of debt, information, bill of complaint, or otherwise; in which actions or suits, no protections, wager of law or essoin shall be allowed; (2) and that the said justices, or two of them, whereof one to be of the *Quorum*, and the said presidents and council, as is aforesaid, and the said mayors or other head officers of cities or towns corporate, shall have full power and authority to hear and determine all and every offence and offences that shall be committed or done against this estatute, or against any branch thereof, as well upon indictment to be taken before them in the sessions of the peace, as upon information, action of debt, or bill of complaint to be sued or exhibited by any person; (3) and shall and may by virtue hereof, make process against the defendant, and award execution, as in any other case they lawfully may by any the laws and statutes of this realm; (4) and shall yearly in *Michaelmas* term certify by estreat, the fines and forfeitures of every the offences contained in this estatute, that shall be found before them, in the court of Exchequer, in like sort and form as they be bound to certify the estreats for other offences and forfeitures to be lost before them; any thing in this statute contained to the contrary notwithstanding."

A proviso for  
the cities of  
London and  
Norwich.

*Sec. 40.* "Provided always, that this act, or any thing therein contained or mentioned, shall not be prejudicial or hurtful to the cities of *London* and *Norwich*, or to the lawful liberties, usages, customs or privileges of the same cities, for or concerning the having or taking of any apprentice or apprentices; but that the citizens and freemen of the same cities shall and may take, have and retain apprentices there, in such manner and form as they might lawfully have done before the making of this statute; this act or any thing therein contained to the contrary in any wise notwithstanding."

The forfeiture  
of him that taketh a prentice  
otherwise than  
is limited by  
this statute.

*Sec. 41.* "And be it also further enacted, that all indentures, covenants, promises and bargains of or for the having, taking or keeping of any apprentice, otherwise hereafter to be made or taken, than is by this statute limited, ordained and appointed, shall be clearly void in the law, to all intents and purposes; (2) and that every person that shall from henceforth take or newly retain any apprentice contrary to the tenour and true meaning of this act, shall forfeit and lose, for every apprentice so by him taken, the sum of ten pounds."

He that is  
bound appren-  
tice within the

*Sec. 42.* "And because there hath been, and is some question and scruple moved, whether any person being within the age of one and twenty years,

years, and bounden to serve as an apprentice, in any other place than in the said city of *London*, should be bounden, accepted and taken as an apprentice.”

*Seff.* 43. “For the resolution of the said scruple and doubt, be it enacted by authority of this present parliament, that all and every such person or persons, that at any time or times from henceforth shall be bounden by indenture, to serve as an apprentice in any art, science, occupation or labour, according to the tenor of this estatute, and in manner and form afore said, albeit the same apprentice, or any of them, shall be within the age of one and twenty years, at the time of the making of their several indentures, shall be bounden to serve for the years in their several indentures contained, as amply and largely to every intent, as if the same apprentice were of full age at the time of the making such indentures; any law, usage or custom to the contrary notwithstanding.”

*Seff.* 44. “Provided always, and be it enacted by the authority afore said, that the inhabitants now dwelling or inhabiting, or that hereafter shall dwell or inhabit within the town of *Godalming* within the county of *Surrey*, within the limits of the watch of the said town, may use and exercise such arts, mysteries and occupations, and take and use apprentices and servants, in such manner and form as the inhabitants within market-towns, by this statute may lawfully do.”

*Seff.* 45. “Provided always, and be it enacted by the authority afore said, that all manner amerciaments, fines, issues and forfeitures which shall arise, grow, or come by reason of any offences or defaults mentioned in this act, or any branch thereof, within any city or town corporate, shall be levied, gathered and received by such person or persons of the same city or town corporate, as shall be appointed by the mayor, or other head officers mentioned in this said act, to the use and maintainance of the same city or town corporate, in such case and condition as any manner other amerciaments, fines, issues or forfeitures have been used to be levied and employed within the same city or town corporate, by reason of any grant or charter from the queen’s majesty that now is, or of any her grace’s noble progenitors, made and granted to the same city, borough, or town corporate; any thing or clause before-mentioned and expressed in this act to the contrary notwithstanding.”

*Seff.* 47. “And be it further enacted by the authority afore said, that if any servant or apprentice of husbandry, or of any art, science or occupation afore said, unlawfully depart or flee into any other shire, that it shall be lawful to the said justices of peace, and to the said mayors, bailiffs, and other head officers of cities and towns corporate, for the time being justices of peace there, to make and grant writs of *Capias*, so many, and such as shall be needful, to be directed to the sheriffs of the counties, or to other head officers of the places whither such servants or apprentices shall so depart or flee, to take their bodies, returnable before them at what time shall please them; so that if they come by such process, that they be put in prison till they shall find sufficient surety, well and honestly to serve their masters, mistresses or dames from whom they so departed or fled, according to the order of the law.”

age of xxi. years, is compellable to serve.

Cro. Car. 179.

A proviso for the inhabitants of Godalming in Surrey.

Who shall have the forfeiture in cities and towns corporate.

A remedy for those servants which depart from their masters, and do flee into other shires.

## Apprentices.

*To be made and done by indenture,*] [See page 58. *sect.* 25.] “ One cannot be bound apprentice, nor discharged without a deed.” 1 *Salk.* 68.

An infant apprentice must be bound by indenture.

1 *Sell.* ca 222.

Mich. 1 Geo.

2. Smith v.

Birch.

“ An action was brought against the defendant for enticing away and detaining the plaintiff's apprentice, who had agreed by writing to serve the plaintiff for seven years. Upon evidence it appeared, that the style of the writing began, *This indenture*, &c. But in fact the parchment was not indented, but was a deed poll. Mr. serjeant *Corbet* took exception to the deed, and insisted that the young man was not an apprentice, because he was not bound by indenture. An infant can be bound no other way than as the statute 5 *Eliz. c.* 4. directs, which is to be by *indenture*, and nothing can make this good. The deed cannot now be indented, for that would be forgery; and by making it so it might be an estoppel; therefore unless the plaintiff shews the apprentice to be of full age at the time of signing such deed, he cannot be accounted his apprentice; and by consequence no action can lye against the defendant for detaining the apprentice, neither can the plaintiff prove him to be his servant by this deed. For he has declared for an apprentice, and must prove him so to be; therefore the plaintiff was nonsuited.”

Person bound apprentice by deed, &c. though not indented, being first duly stamped, is intitled to a settlement where apprenticed.

*But for the purpose of gaining a settlement*, it is enacted by 31 *Geo. 2. c.* 11. *sect.* 1. “ That no person who shall have been bound an apprentice, or who shall hereafter be bound an apprentice, by any deed, writing or contract, *not indented*, being first legally stamped, shall be liable to be removed from the town, parish or place where he or she shall have been so bound an apprentice, and resident forty days, by virtue of any order of removal, granted by two justices of the Peace of any county, riding, division, city, borough, town corporate or place; or by virtue of any order of the justices at their general or quarter sessions, by reason or on account of such deed, writing or contract, not being indented only.”

*It shall not be lawful to any person*] [See page 59 *sect.* 31.] But by *stat.* 15. *Car. 2. c.* 15. *sect.* 2. it is enacted, “ That it shall and may be lawful for any person or persons whatsoever, native or foreigner, freely and without paying any acknowledgment, fee or other gratuity for the same, in any place of *England* or *Wales*, privileged or unprivileged, corporate or not corporate, to set up and exercise the trade, occupation of mystery of breaking, hickling or dressing of hemp or flax; as also for making and whitening of thread; as also of spinning, weaving, making, whitening or bleaching of any sort of cloth whatsoever made of hemp or flax only: As also the trade, occupation or mystery of making of twine or nets for fishery, or of storing of cordage: As also the trade, occupation or mystery of making any sort of tapeltry-hangings; any law, statute or usage to the contrary in any wise notwithstanding.”

And by the *stat.* 6 & 7 *Will. 3. c.* 17. *sect.* 12. it is enacted, “ That if any person shall be guilty of clipping, coining, counterfeiting, washing, filing, or otherwise diminishing the coin of this realm, and afterwards discover two or more person or persons who already have or hereafter shall commit any of the said crimes, so as two or more of the person or persons discovered shall be convicted of the same, any such discoverer shall him-  
self

self have, and is hereby intituled to, the gracious pardon of his majesty, his heirs and successors, for all such his crimes which he or they have committed at any time or times before such discovery made. And if the person making such discovery be an apprentice, he shall be deemed and taken, and is hereby declared a freeman, and shall have, and may exercise any lawful trade, possession, or mystery, with all liberties and privileges, and in as full and ample a manner, as if the said person had served the full time of his apprenticeship; any law, statute, custom, or ordinance, to the contrary notwithstanding.”

**Stat. 3 Geo. 3. c. 8.** [*A. D. 1763, intituled,*] “ An act to enable 3 Geo. 3. c. 8. such officers, mariners, and soldiers, as have been in the land or sea-service, or in the marines, since the twenty-second year of his late majesty king *George* the second, to exercise trades.”

“ Whereas there have been, and are, divers officers, mariners, soldiers, Preamble. and marines, who have served his late majesty, or his present majesty, in the late wars by sea and land, some of which are men that used trades, others that were apprentices to trades, who had not served out their times, and others, who by their own industry, have made themselves apt and fit for trades: Many of which, the wars being now ended, would willingly employ themselves in those trades which they were formerly accustomed to, or which they are apt or able to follow and make use of, for the getting their living by their own labour, but are or may be hindered from exercising those trades in certain cities and corporations, and other places within this kingdom, because of certain by-laws and customs of those places, and of the statute made in the fifth year of queen *Elizabeth*, prohibiting 5 Eliz. the use of certain trades by any person who hath not served as an apprentice to such trade for the space of seven years: For remedy whereof be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all such of- Officers, ma- ficers, mariners, soldiers, and marines, who have been at any time em- riners, soldi- ployed in the service of his late majesty, or of his present majesty, since ers, and ma- the twenty-ninth day of *November* in the year of our Lord one thousand rines, who have been at any time em- ployed in the service of his late majesty, or of his present majesty, since 29 Nov. 1748, and have not since deserted the said ser- 1748, and have not since deserted, and vices; and also the wives and children of such officers, mariners, soldiers, ployed in the king’s service since 29 Nov. 1748, and have not since deserted, and also the wives and children of such, are authorized to set up and ex- ercise trades within any parts of Great Britain or Ireland, without any let, suit or molestation, of any person or persons whatsoever, for or by reason of the using of such trade; nor shall such of- deserted, and ficers, mariners, soldiers, or marines, or their wives or children, during also the wives and children of such, are authorized to set up and ex- ercise trades within any parts of Great Britain or the time they shall exercise such trades, be removeable from such respec- of such, are tative place or places, to his, her, or their last legal place of settlement, by authorized to set up and ex- til such person or persons shall become actually chargeable to such parish or ercise trades within any parts of Great place; and if any such officer or officers, mariner or mariners, soldier or ercise trades within any parts of Great Britain or

Ireland, without lett ; soldiers, marine or marines, or the wife or child of any such officer, mariner, soldier, or marine, who shall be sued, impleaded, or indicted in any court whatsoever, within this kingdom, for using or exercising any such trades as aforesaid, then the said officer or officers, mariner or mariners, soldier or soldiers, marine or marines, or any wife or child of any such officer, mariner, soldier, or marine, making it appear to the same court, where they are so sued, impleaded, or indicted, that they have served his late or present majesty as aforesaid, or that he, she, or they, is or are the wife or wives, child or children, of such officer or officers, mariner or mariners, soldier or soldiers, marine or marines, who shall have so served his late or present majesty, shall, upon the general issue pleaded, be found not guilty in any plaint, bill, information or indictment, exhibited against them; and such persons who notwithstanding this act, shall prosecute the said suit, by bill, plaint, information, or indictment, and shall have a verdict pass against him, or become nonsuit therein, or discontinue their said suit, such person or persons shall pay unto such officer or officers, mariner or mariners, soldier or soldiers, marine or marines, or the wife or child of such officer, mariner, soldier, or marine, respectively, double costs of suit, to be recovered as any other costs at common law may be recovered; and all judges and jurors, before whom any such suit, information, or indictment, shall be brought, and all other persons whatsoever, are to take notice of this present act, and shall conform themselves thereto; any statute, law, ordinance, custom, or provision, to the contrary in any wise notwithstanding.”

Where any two justices for the county or place, where they shall so set up, summon them to give evidence as to the place of their last legal settlement, they shall make oath accordingly; and an attested copy whereof shall be given them, which shall be admitted as evidence at the quarter sessions ;

“ 2. And be it further enacted by the authority aforesaid, That it shall and may be lawful for any two or more justices of the peace for the county, town, or place, where any such officer, mariner, soldier, or marine, shall set up and exercise any trade as aforesaid, to cause such officer, mariner, soldier, or marine, to be summoned before them in the town or place where such officer, mariner, soldier, or marine, shall set up and exercise such trade as aforesaid, in order to make oath of the place of his last legal settlement (which oath the said justices are hereby impowered to administer) and such officer, mariner, soldier, or marine, are hereby directed to obey such summons, and to make oath accordingly; and such justices are hereby required to give an attested copy of such affidavit so made before them, to the person making the same, in order that he may produce it when required; which attested copy shall at any time be admitted as evidence as to such last legal settlement, before any of his majesty's justices of the peace at any general or quarter sessions of the peace.”

and if summoned again, they shall not be obliged to take a fresh oath, but produce the former, or leave a copy thereof.

“ 3. Provided always, That in case any such officer, mariner, soldier, or marine, shall again be summoned to make oath as aforesaid, then on such attested copy of the oath by him formerly taken being produced by him or by any other person on his behalf, such officer, mariner, soldier, or marine, shall not be obliged to take any other or further oath with regard to his legal settlement, but shall have a copy of such attested copy of his examination, if required.”

“ 4. Pro-

“ 4. Provided always, That this act shall not in any wise be prejudicial to the privileges of the universities of *Cambridge* and *Oxford*, or either of them; or extend to give liberty to any person to set up the trade of a vintner, or to sell any wine or other liquors within the said universities, without licence first had and obtained from the vice-chancellor of the same respectively.”

Privileges of the two universities reserved.

*Manual occupation*] [See page 59. sect. 31.] And yet he who bakes, brews, makes candles, &c. for his own use, is not said in law to use any manual occupation: And upon this branch, and much to this purpose, a judgment was given in the court of Exchequer, and afterwards affirmed in a writ of error in the Exchequer-chamber, *Mich. 6 Jac.* and the case, worthy to be known, was such. *Taylor* did inform in the Exchequer on the *stat. of 5 Eliz. c. tam pro dom. rege, quam pro seipso*, against *Shoile*, that he had exercised the art and mystery of a brewer, &c. for divers months, against the said act, and averred, that the defendant did not use or exercise the art or mystery of a brewer at the time of the making of the said act, nor had been an apprentice for seven years at the least, in the art and mystery of a brewer, according to the said act, &c. The defendant demurred in law upon the information, and judgment was given against him by the barons at the Exchequer, on which judgment a writ of error was brought in the Exchequer-chamber, and *Mich. 6 Jac. regis*, the matter was argued by counsel on both sides; and two errors were assigned, one that a brewer is not within the said branch of the said act, on which the information is conceived, for the words are, *That it shall not be lawful to any person or persons, other than such as now do lawfully use or exercise any art, mystery, or manual occupation, to set up, use or exercise any art, mystery or occupation, except he shall have been brought up therein seven years at the least as an apprentice*: And it was said, that the trade of a brewer is not any art, mystery, or manual occupation within the said branch, because it is easily and presently learned, and need not have seven years apprenticeship to be instructed in it, for every housewife in the country can brew; and the *stat. of 22 H. 8. c. 13.* declares, that a brewer is not a handicraft artificer. The other error was, that the said averment was not sufficient, for the averment ought to be as general as the exception in the statute is, That the defendant did not use any art, mystery, or occupation at the time of the making of the act; for by their pretence, if he exercised any art, mystery, or manual occupation then, as a taylor, carpenter, &c. he might now use any other art, mystery, or manual occupation whatsoever. As to the first, it was resolved, That the art of a brewer to keep a common brew-house to sell beer to any other, is an art, mystery, and manual occupation within the said branch of the act; for in the beginning of the act, it is enacted, *That no person shall retain for less time than a whole year in any of the sciences, crafts, mysteries, or arts of clothing, &c. bakers, brewers, &c. cooks, &c.* So that by the judgment of that very parliament, the trade of a brewer is an art and mystery: Which words are in the said branch upon which the said information is grounded. And it was resolved, That he who brews, bakes, &c. for his own use, doth not use or exercise

The art of a brewer is an art, mystery, and manual occupation within the said branches of the act.  
8 Co. Rep. 129.  
*Mich. 6 Jac.*  
1. *Taylor v. Shoile.*

cise any art, mystery, or manual occupation against the said act, for the said words imply, that he so use or exercise the art, mystery, or manual occupation, that by sale of the commodities of his occupation he get his living, but to say, that it is not any art, mystery, or manual occupation, because every housewife brews for her private use, so likewise she bakes and dresses meat, &c. and yet none can keep a common bake-house, or cook's shop to sell to others, unless he has been an apprentice, &c. according to the said act, for they are expressly named also in the act, as arts and mysteries: And the act of the 22 H. 8. explains, That a brewer, baker, chirurgion, or scrivener alien, are no handicraftsmen within the purview and intention of certain penal laws; but that doth not prove that they are not arts or mysteries; for art or mystery is more general than handicraft, for that is restrained to manufactures, but not within the penalty of the said statutes; and it is no question, that in truth they all are arts, mysteries, or manual occupations. As to the second it was resolved, that the intent of the act was, That none should take upon him any art, mystery, or manual occupation, but such in which he had knowledge. And therefore the statute intended, that he who used any art, mystery, or manual occupation at the time of the said act, might use the same art or mystery; for *quod quisque norit in hoc se exercent*; and the words of the said branch are, *As now do lawfully use*, &c. And it was said, that it was very necessary that brewers should have skill and knowledge in brewing good and wholesome beer, for that doth much conduce to mens health. And so the first judgment was affirmed.

Exercising a  
trade by  
others is with-  
in the statute  
5 Eliz.  
2 Salk. 610.  
Trin. 3 W.  
& M.  
Hobbs qui  
tam v. Young.

*To set up, occupy, use or exercise,*] [See page 59. sect. 31.] Debt on 5 Eliz. for using the trade of a clothworker, not being brought up an apprentice; upon *nil debet* the jury found, that the defendant was a *Turkey* merchant, and exported woollen manufactures into *Turkey*, and that he employed clothiers who had served apprenticeships to work the cloths in his own house, at his own charge and with his own materials, which he sent into *Turkey* as merchandize, but that the defendant never served an apprenticeship. *Per cur.* 1st, The defendant is the trader in this case, and the person that exercises the trade, because he employs the rest, who work but as his servants, and the loss and gain is to be his. 2dly, This is a trading within the statute; because the cloth is not confined to the use of his own family, but vended out for the sake of commerce; and whether the utterance be in *England* or *Turkey*, is not material. 3dly, That he that hath not served an apprenticeship is by this statute restrained to work as a trader, *either by himself or others*; for the intent of this act is to annex the benefit of trade to such as underwent the hardship of learning it, thereby to encourage labour in youth: And few would undergo the trouble of being apprentices, if they might employ others to work for them. 4thly, This is a negative statute, and no one shall exercise a trade against it, unless by virtue of a custom, as the widows of tradesmen, who by custom carry on the trade of their husbands, which the court held not within the statute.

*Broderick* moved to quash an indictment on 5 *Eliz. c. 4.* for using the trade of a fellmonger, not having been an apprentice seven years; he urged, that this was a business required no skill; for it was only to pull the wool from the skin. He cited 1 *Cro. 499.* information for exercising the trade of a hemp-dresser reversed. One *Pas. 4 Jac. 1.* for exercising the trade of a woolcomber, quashed. Of a pippingmonger reversed. *Sed per Holt. C. J.* If in the indictment it be averred to be a trade at the time of making the statute we will not quash it; for whether it was a trade then or no, or whether any skill be required to the exercise of it, is matter of fact proper for the trial of a jury: and there are many trades within the general words and equity of that act, besides those that are mentioned therein. The case of a costermonger is not yet determined, and the case of an upholsterer, 2 *Bulst. 186.* is not law. The court would not quash it.

Indictment for using the trade of a merchant-taylor contrary to the statute 5 *Eliz.* Serjeant *Broderick* moved to quash it, because it is not a trade within the statute. Quashed *nisi.* Some days after Mr. *Eyre* moved to quash an indictment against *Cornish*, for using the trade of a seamstress, not having served as an apprentice; and the court refused, because it was set forth in the indictment to be a trade in *England* at the time of making the act; wherein the words are, *any craft, mystery, or occupation* now used. So that if this trade of a seamstress be not within the act, the defendant would have the advantage of it upon the trial. But as to *Harper's case*, which Mr. *Eyre* put them in mind of, the court seemed to think a merchant-taylor was nonsense and unintelligible; they did not know what a merchant-taylor meant, and so it differed. It is a good exception that it is not averred in the indictment, that the trade therein mentioned was a trade at the time of making the statute. *Domina regina versus Cornish, eodem termino.*

This was an action of debt for a penalty on 5 *Eliz. c. 4.* for exercising the trade of a brewer, without having served an apprenticeship. In the declaration there were two counts. To the former "*nil debet*" was pleaded: and there was a general verdict for the defendant, (*viz.* "that the defendant does not owe, &c.") But on the second count there was a special verdict: which was to the following effect, *viz.* that the defendant *Chase* and one *Coxe*, were, and have been, during all the time charged in this count, partners in the trade, and that the trade was carried on, and had been for four years carried on, in their joint names; that *Coxe* did serve an apprenticeship, &c. but *Chase* never did; and that *Coxe* is a working brewer, and was paid a salary for his labour; which salary was always deducted and allowed to him, previous to a division of the profits; and the entries at the Excise-office were in their joint names: but that the defendant *John Chase*, never exercised the trade himself; (which was wholly managed and carried on by *Coxe*,) but only shared the profits, and stood the risks of the partnership. And they find it to be a trade within 5 *Eliz. c. 4.* Question, on 5 *Eliz. c. 4. sect. 31.* "Whether the defendant *John Chase* is within the act, upon this special finding." Mr. *Morton* personally,



within the  
prohibitory  
penal act of  
5 Eliz. c. 4.  
so as to be li-  
able to the pe-  
nalties of it.  
1 Bur. Rep.  
1, 9. Mich.  
30 Geo. 2.  
(1756) Ray-  
nard v. Chase.

*Quer.* This attempt to evade the force of the act, by the scheme of a partnership with a qualified trader, would entirely frustrate the intention, and is directly contrary to the words of the act. The short of this case is, — *Chase* not being himself qualified, takes a partner who is qualified; which qualified partner is the only acting person in carrying on the trade; and *Chase* never interfered in it. There was the like point before the court in *P. 18 G. 2. B. R. Rex v. Driffield*. But, per *Denison* and *Foster* justices, that case was never determined: it went off upon an objection to the jurisdiction. *Morton*: — But the lord chief justice *Lee* then said, “that he had never known a person exempted from the statute, who had not served an apprenticeship.” — And as to his not interfering in the trade, the case of *Hobbs, qui tam, &c.* vers. *Young*, reported in 2 *Salk.* 610. and in *Cartbew* 162. and in 3 *Mod.* 313. is a determination in point, and not to be distinguished from the present case. Therefore he prayed judgment for the plaintiff.

Mr. *Bishop contra, pro* defendant, said, he would first consider how this matter stood before the statute, with regard to the free and unlimited right that every man naturally and legally had of exercising whatever trade he pleased; 2dly, The constructions that have been favourably made upon it, in extension of the qualifications to exercise trade; and 3dly, Distinguish this case from the cases cited. And first, the liberty of trade is a natural and common-law right; and was long unrestrained. The statute of 37 *E. 3. c. 5.* which first restrained it, was very soon repealed by 38 *Ed. 3. c. 2.* And lord *Coke* in 4 *Inst.* 31. says, “that such acts of parliament never live long.” He cited the case in 2 *Bulstr.* 186. *Dominus Rex and Allen plaintiffs* against *Tooley, defendant*, as an authority for him; though the court did not indeed formally pronounce any final judgment therein. And he also cited 11 *Co.* 53. the case of the taylor of *Ipswich*. Secondly, The before-mentioned case in 2 *Bulstr.* 186. *The King and Allen v. Tooley*, proves the construction to have been favourable, *Jenk. Cent. case* 15. p. 284. “A private brewer is not within the statute.” *Keilwey* 96. pl. 6. proves that the statute ought to be taken strictly; being penal, and in derogation of the common law. And judges have dispensed with the rigour of it: as in *Froth's* case, 1 *Salk.* 67. where seven years apprenticeship beyond sea, though without binding, was holden sufficient. So *Queen v. Maddox*, 2 *Salk.* 613. *S. P.* accordingly: and the court there call this statute of the 5th of *Eliz.* a hard law. *Comberb.* 254. *Rex v. Collor*, per *Eyre* justice, one brother living with another seven years (at the trade of a tallow-chandler) though not bound, may set up the trade. 1 *Mod.* 26. pl. 69. *Dominus Rex v. Ternith*, proves too that this statute ought not to be extended further than necessity requires. Now it is not found by the present special verdict in the affirmative, “that this man had occupied, used, and exercised the trade:” but it is found (on the contrary) negatively; “that he has not interfered in it; but it was wholly carried on by *Coxe*.” And *Hob.* 298. says the rule is, “that affirmatives in statutes that introduce new laws, imply a negative, &c.” However here is an express negative. Thirdly, with regard to the cases cited. —

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As to *Rex v. Driffeld*, whatever was found in the affirmative in that case, is found in the negative here. And as to the case of *Hobbs v. Young*, there was *no partner* skilful in the trade ; but only *servants* : whereas here is a skilful partner to conduct it ; and the servants are employed and set to work by *his partner*, who is skilful, and are *not* employed and set on work by the defendant. Then he added, (4thly,) some arguments *ab inconvenienti*. First, that this will affect all great undertakings : for it seldom happens in such great undertakings, that all the partners are duly qualified, in strictness. So likewise, it would affect all cases where *infants* and *trustees* are intitled to shares of profitable trades. So, where creditors have shares in them. And *apprenticeships*, in *great breweries*, are not, in fact, usual or customary. Mr. *Morton*, in reply, premised that the rule of construction upon this act must be *uniform*, with regard to *all* the trades within it : and *breweries* cannot be distinguished from the rest. In answer to Mr. *Bishop's* argument, he observed, 1st, it is of no importance what was the right before the statute : the statute was made *expressly*, to restrain such rights in future, for the good of the public. 2dly, He said, he did not want to *extend* this law : this case is fully and completely *within* it, without straining it at all. And the constructions that Mr. *Bishop* calls favourable, in the instances which he has cited, are no more than just and reasonable upon the circumstances of the respective cases in which they were made. 3dly, As to the negative *finding* in the present case, it amounts to no more, than "that this man did *not mind his business*," (which the other partner did.) And as to setting to work, it is plain that *Coxe* is set to work by *Chase* ; and, *virtually*, he sets all the servants to work. Indeed, *Coxe* is here both a journeyman and a partner to *Chase* : for *Chase* pays him as a journeyman ; and, besides that, gives him a share of the profits. And my lord chief justice *Holt's* opinion in the case of *Hobbs* and *Young* is quite applicable to the present case. 4thly, He endeavoured to shew that the construing this man to be within the penalty of the statute, could not be attended with any sort of inconvenience. Therefore he prayed judgment for the plaintiff. As this was the first argument, it was expected (as of course) that it would be argued again : but lord *Mansfield* gave his opinion immediately to the following effect.

Lord *Mansfield* : Where we have no doubt, we ought not to put the parties to the delay and expence of a farther argument, nor leave other persons, who may be interested in the determination of a point so general, unnecessarily under the anxiety of suspense. The defendant is to share the profits with *Coxe*, in moieties, and is liable to the debts of the partnership. But it is *positively and expressly* found, "That during all the time charged, he never acted in or exercised the trade." He was not, by the *terms* of his agreement, to act in the trade. The other partner was to do the whole, and had a particular salary on that account. It is not found that either *Coxe* or any servant under him was set to work by *Chase* ; nor that *Chase* did any *act* whatever of exercising the trade : He was only concerned in the *profits*. Now though this may be, to some *purposes*, exercising a trade, in respect of third persons who deal with the partnership as creditors, and within the meaning of the *statutes concerning bankrupts* ; yet the present que-

## Apprentices.

sion is, "Whether it be exercising a trade, contrary to this act." I think Mr. *Bishop* has laid his foundation right, against extending the penal prohibition beyond the express letter of the statute. 1st, This is a penal law; 2dly, It is in restraint of natural right; and, 3dly, It is contrary to the general right given by the common law of this kingdom. I will add, 4thly, The policy, upon which the act was made, is, from experience, become doubtful. Bad and unskilful workmen are rarely prosecuted. This act was made early in the reign of queen *Elizabeth*. Afterwards, when the great number of manufacturers, who took refuge in *England* from the duke *D'Alva's* persecution, had brought trade and commerce with them, and enlarged our notions; the restraint introduced by this law was thought so unfavourable, that in 33 *Eliz.* in the Exchequer, 4 *Leon.* 9. pl. 39. it was construed away: For it was holden clearly by the judges, in that case, (which construction, however, I take not to be law now,) that "If one hath been an apprentice for seven years at any one trade mentioned within the said statute, he may exercise any trade named in it, though he hath not been an apprentice to it." All these observations only shew, "That this act, as to what enforces the penalty of it, ought to be taken strictly." And accordingly, the constructions made by former judges have been favourable to the qualifications of the persons attacked for exercising the trade even where they have not actually served apprenticeships. They have, by a liberal interpretation, extended the qualifications for exercising the trade, much beyond the letter of the act; and have confined the penalty and prohibition to cases precisely within the express letter. Let us consider whether the present case be within the letter, or even the meaning of this act. The general policy of the act was to have trades carried on by persons who had skill in them. Now here the personal skill of the defendant makes no real difference in the case. For the person who is skilful, does every thing, and receives no direction from this man: He neither did, nor was to interfere.

The case of *Hobbs and Young* (See p. 68.) is not parallel. There, the defendant, a single man, directed the whole trade; was the master, and directed all the servants. As between master and servant, no doubt, it is the master, who carries on the trade, and not the servant. But in *Hobbs and Young* there was no partnership; nor (what is the distinguishing character of the present case) a mere naked sharing of the profits, and risking a proportion of the loss; without his acting or directing at all, in any manner whatsoever. In many considerable undertakings, it is absolutely necessary to take in persons as partners, to share the profits and risque the loss. And the general usage and practice of mankind ought to have weight in determinations of this sort, affecting trade and commerce, and the manner of carrying them on. It is notorious that many partnerships are entered into upon the foundation of one partner contributing industry and skill, and the other money. Many great breweries, and other trades have been carried on for the benefit of infants and residuary legatees, under the direction of the court of Chancery. Now if the plaintiff's construction was to hold, the whole direction and decree of the court of Chancery was contrary to law, and

and to an express act of parliament. So it is likewise practised in *other* great trades. The late Mr. *Child* directed his business of a *banker*, to be carried on for the benefit of his children and other persons.—Many other instances might be mentioned. It would introduce the utmost confusion in affairs of trade and commerce, if this construction should prevail. On the *other* hand, I see no inconvenience: it is exactly the same thing as to the trade, in every jota, “whether this partner has or has not served an apprenticeship.” Therefore I think the defendant *not* liable to the *penalty* of 5 *Eliz.* Mr. justice *Denison* said, that this was a new case. For though the cases of *Rex v. Driffeld*, and *Adcock v. Gell*, were indeed before the court, yet *no opinion* was delivered in either of those cases. He concurred that it was *not* an *exercise* of the trade *within* 5 *Eliz.* The true intent of that act was, that no man should *exercise* any of those trades, unless he had *skill* in them. It has never been extended, by any liberal construction of it, in point of enforcing the *penalty*. And the present question is, “Whether this man has *exercised* the trade, within the meaning of it, so as to be *liable to the penalty*.” Now it is here found, “That he *never* did *interfere* in the trade *himself*.” In the case of *Hobbs v. Young*, the defendant was the *super-intender* of the work, and *did exercise* the trade, without having any skill in it. And *this* is the *point in question*, and the principal determination in that case of *Hobbs v. Young*, whatever else might drop from the judges in giving their opinion. But *here* the defendant *never meddles at all*; but leaves *all the management* to a partner, who had skill: He himself *never acted* in carrying on the trade. It may be said indeed, “That *Chase* is liable to the *statutes of bankrupts*.” True: But the construction of *those* acts, made for the benefit of the bankrupt’s creditors, is very different from the construction of this *prohibitory* and *penal* act, which ought to receive a *strict* construction, in point of extending the *penalty*. Therefore, for these reasons, and those given by the lord Ch. J. he held, “That this was *not* an *exercising* the trade *within the act*.”

Mr. Justice *Foster* concurred, and said, he had prepared himself to give his reasons *at large*: But as the lord chief justice had gone through them so fully, and enforced them in so clear and satisfactory a manner, he would only, *in general*, declare his concurrence. Mr. justice *Wilmot* of the same opinion. By the court unanimously judgment was given for the defendant.

On shewing cause against a rule for quashing an indictment on 5 *Eliz.* *c. 4. sect. 31.* for exercising the occupation of a tanner, not having served an apprenticeship therein for *seven* years; Mr. *Sayer*, on the part of the defendant, objected, 1<sup>st</sup>, That though the trade of a tanner was undoubtedly a trade used within the realm of *England* at the time of making this act of 5 *Eliz.* yet it was *not meant and intended to be included in this prohibitory clause*; being at that very time under regulation by *other* statutes (no less than sixteen in number) made for the purpose of regulating it; and particularly by 1 *Eliz. c. 9.* which allows the use of it to apprentices or covenant servants brought up in that trade *four* years: And another statute made in the very same year with the present one, *viz. 5 Eliz. c. 8.* de-

Indictment for exercising the occupation of a tanner, not having served an apprenticeship for seven years therein, is sufficient without specifying and averring the want of other qualifications

allowed by  
subsequent  
statutes, For  
such other  
qualifications  
or exceptions  
ought to be  
shewn by the  
defendant.  
2 Bur. Rep.  
1035-37.  
'Trin 33 &  
34 Geo. 2.  
Rex v. Pem-  
berton.

scribes who may be tanners. So that it cannot be imagined that *this* occupation was ever meant to be included in the prohibition of 5 Eliz. c. 4. sect. 31. And though both these statutes (of 1 Eliz. c. 9. and 5 Eliz. c. 8.) are now repealed, yet they are equally an argument to shew the construction of the clause in question, as if they stood unrepealed: And so the court considered a repealed statute, in construing the unrepealed one of 43 Eliz. c. 2. in the case of *Rex v. Loxdale et al'*, H. 1757. 30 G. 2. B. R. 2d objection.—If the trade of a *tanner* was meant to be included in the prohibitory clause of 5 Eliz. c. 4. sect. 31. yet that statute was, *as to this particular trade or occupation*, repealed by the 5 Eliz. c. 8. and 1 Jac. 1. c. 22. sect. 5. which are *repugnant* to, and consequently a *virtual repeal* thereof, so far as concerns *this* trade. The former is indeed now repealed: But the latter is not: they admit of five or six other *qualifications* besides having served an apprenticeship for seven years; namely, such as *then had tanhouses* and *used* the trade; also the *wives* and *sons* of *tanners* having used the mystery four years; also such persons as should *marry* the wives or daughters, to whom *tanhouses* and *fats* should be left. So that there are now *many other qualifications*, that justify using the trade, *besides* that of serving a seven years apprenticeship. 3d objection.—An indictment will not therefore now lie upon 5 Eliz. c. 4. sect. 31. *alone* and *generally*: But it ought to specify all those other *qualifications* allowed by the subsequent statute; and to shew that the party is *not within any of them*; as is done in convictions upon the game acts, and convictions for swearing, and upon the act of 8 and 9 W. 3. c. 26. “For the better preventing counterfeiting the current coin of this kingdom.” And for this he cited *Rex v. Maurice Jarvis*, H. 1757. 30 G. 2. (1 Bur. Rep. 148, 151.) and *Rex v. Sparling*, (Hil. 8 Geo. 1.) where a conviction for prophane cursing and swearing was quashed, because it did not alledge, “That the defendant was *not* a servant, labourer, common soldier, or sailor.” This indictment is upon a statute not favoured: and the case is the harder upon the defendant, and the more oppressive, for that he is under another indictment on 1 Jac. 1. c. 22. Mr. Norton, for the prosecutor, having been heard in answer to the objections, and having made the proper distinctions between the cases cited and the case now in question; the court were unanimously of opinion, that *whatever licence* might be given by any statute *subsequent* to 5 Eliz. c. 4. to persons who had not served a seven years apprenticeship, to exercise the trade of a tanner under certain *other qualifications* therein described; yet, as the trade of a tanner was clearly a trade *used* at the time of making the 5 Eliz. c. 4. (and seems acknowledged even by 1 Jac. 1. c. 22. sect. 5. to be *included* in 5 Eliz. c. 4.) It is *not necessary*, in an indictment upon 5 Eliz. c. 4. sect. 31. for having used this trade without having served such apprenticeship, to *aver* the *want of the other qualifications*, which by the *subsequent* statute intitle a person so qualified, to use the trade: But such *other qualifications* or exceptions must be shewn by the defendant, by way of excuse, either by *plea* or in *evidence*. It is enough for the prosecutor, to bring the case within the general purview of the statute upon which the indictment is founded; if that statute has *general prohibitory*

*prohibitory words* in it. For where an indictment is brought upon a statute which has *general prohibitory words* in it, it is sufficient to charge the offence *generally* in the words of the statute: And if a *subsequent statute*, or (as Mr. justice *Foster* and Mr. justice *Wilmot*, who spoke after lord *Mansfield*, and Mr. justice *Denison*, added, even a clause of *exception* contained in the *same* statute,) excuses persons under such and such circumstances, or gives licence to persons so and so qualified, as to *excuse* or *except* them of the general prohibitory words, that must come *by way of plea, or evidence*, "That the party is not within such general prohibition, but *excepted* out of it." Indeed, where the words of a statute are descriptive of the *Nature* of the offence, or the *purview* of the statute, or necessary to give a *summary* jurisdiction, *there* it is necessary to specify in the particular words of such statute. In the statute to prevent counterfeiting the coin (8 and 9 *W. 3. c. 26.*) it is the *purview* of the statute; not a general prohibition. 'Tis description — "Any smith, engraver, founder, or other person or persons whatsoever, other than and except the persons employed in or for his majesty's mint, &c. *N.B.* Mr. justice *Foster* said, he believed there were no less than a hundred trades mentioned in other clauses of 5 *Eliz. c. 4.* And that he had once taken the pains to extract them, and range them alphabetically. *Per cur.* unanimously, the rule to shew cause why the indictment should not be quashed, was discharged.

*Any craft, mystery or occupation, now used*] [See page 59. *sect. 31.*] That is, on the 12th *Jan. 1562*, when that parliament began; and this restraint shall not extend any further, than the words do expressly direct, and therefore not to new arts and mysteries since invented. 1 *Rol. Rep. 10. 1 Vent. 326, 346.*

*Within the realm of England or Wales.*] [See page 59. *sect. 31.*] In an indictment for exercising the trade of a *Salter* (which was held well, though not mentioned in the statute 5 *Eliz. c. 4. 1 Lev. 243. 1 Sid. 367. 2 Keb. 582*) the stile of the king was *Magnae Britanniae*; and the trade laid to be exercised at the time of the statute *infra hoc regnum* must refer to *Magnae Britanniae*, whereas by the words of the statute it must be used in *England*; and for this fault the indictment was quashed. And so was a former indictment, *Rex v. Parish, Trin. 13 Geo. 1.*

Mr. *Yates* moved to quash an indictment for exercising the trade of a baker, the defendant not having served a legal apprenticeship. The exception he took to it was, that the trade was not laid to be used *infra regnum Anglie* at the time of the act. The court said, the trade of a baker was within the words of the act; and no averment of the trade's being used at the time of the act is necessary, but where the trade only falls within the general conclusion of the clause at the last.

*Except he shall have been brought up therein seven years.*] [See page 59. *sect. 31.*] Indictment for using the trade of a taylor, not having served an apprenticeship seven years, was quashed, because only said, not having served as an

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apprentice

Indictment for using a trade used in Great Britain at the time of the stat. 5 *Eliz.* quashed. 2 *Stran.* 788. *Mich. 1 Geo. 2. Rex v. Lister.* What shall be said to be a good indictment for exercising a trade without having served an apprenticeship, 1 *Barnardist. 277. Hil. 3 Geo. 2.* The king and Munree. Service of apprenticeship

beyond sea, sufficient to enable him to use the trade in England. 1 Salk. 67. Pasch. 11 Will. 3. The King v. Fox.

Following a trade for 7 years without binding sufficient. 2 Salk. 613. East. 5 Ann. Regina v. Maddox.

Evidence of having exercised a trade, without having served as an apprentice, not sufficient. 1 Barnardist. Rep. 367. Trin. 3. Geo. 2. The king and Morrice. 3 Keb. 400. Mich. 26 Car. 2. King and Moor.

In an indictment upon the statute of 5 Eliz. for exercising the trade of a Grocer, without having served a legal apprenticeship; the defendant offered to give evidence of his having exercised this trade for seven years, as being matter *tantamount* to his having served an apprenticeship for that time. Chief justice Eyres did allow, that the case had gone so far as to allow a wife's living in the shop with her husband for seven years to be equivalent to an apprenticeship; but thought the present case not strong enough to comply with the meaning of the statute. Accordingly the evidence was disallowed.

1 Black. Comment. 415.

*Shall or will become a journeyman.*] The defendant was indicted for using the trade of a weaver, not having served as an apprentice seven years; the evidence was, he served six as an apprentice, and had since as journeyman in the same trade worked above that time: And by the court the serving of seven years is sufficient either way; and the defendant was found not guilty.

This law, (*viz. Eliz. c. 4.*) with regard to the exclusive part of it, has by turns been looked upon as a hard law, or as a beneficial one, according to the prevailing humour of the times: which has occasioned a great variety of resolutions in the courts of law concerning it; and attempts have been frequently made for its repeal, though hitherto without success. At common law every man might use what trade he pleased, but this statute restrains that liberty to such as have served as apprentices: the adversaries to which provision say, that all restrictions (which tend to introduce monopolies) are pernicious to trade; the advocates for it, alledge that unskilfulness in trades is equally detrimental to the public, as monopolies. This reason indeed only extends to such trades, in the exercise whereof skill is required: but another of their arguments goes much farther; *viz.* that apprenticeships are useful to the commonwealth, by employing of youth, and learning them to be early industrious, but that no one would be induced to undergo a seven years servitude, if others, though equally skilful, were allowed the same advantages without having undergone the same discipline: and in this there seems to be much reason. However, the resolutions of the courts have in general rather confined than extended the restriction. No trades are held to be within the statute, but such as were in being at the making of it: (Lord Raym. 514) for trading in a country village, apprenticeships are not requisite (1 vent. 51. 2 Keb. 583.) and following the trade seven years is sufficient without any binding; for the statute only says, the person must serve *as* an apprentice, and does not require an actual apprenticeship to have existed. Lord Raym. 1179.

*Art, mystery or science before expressed]* see page 60. *Sett.* 35. For the arts or trades before expressed, see page 58. *sett.* 27. page 59. *sett.* 29, 30. and page 60, *sett.* 33. Besides which, the following arts or trades are mentioned in *sett.* 3. of this act, namely, clothiers, woollen cloth weavers, tuckers, fullers, clothworkers, shermen, dyers, hosiers, tailors, shoemakers, tanners, pewterers, bakers, brewers, glovers, cutlers, smiths, farriers, curriers, saddlers, spurriers, turners, cappers, hatmakers or feltmakers, bowyers, fletchers, arrow-head-makers, butchers, cooks or millers.

On a *certiorari* it was moved to quash an order of sessions for the discharge of one *Edward Green* from his apprenticeship to the defendant *Gately*; the fact was, that *Gately* was a mountebank, and being at a place in *Yorkshire* where he kept a public stage, *Green* was by indenture bound apprentice to him in this manner, *viz.* to *Robert Gately*, surgeon, to learn the trade he now useth; and immediately he went upon the stage, and ever since continued in the imploy; after which being with his master *Gately* in *Middlesex*, he complained to the justices that his master did not teach him the trade, upon which they discharged him: This being done *Green* set up the trade of mountebank himself. Mr. *Northy* moved to quash the order, the justices being willing, because they were imposed upon. 1st, He excepted to the form of the order, that they ordered the servant to be discharged from his master, whereas the discharge should be mutual. 2dly, Because the *Stat.* 5 *Eliz.* in discharging apprentices is confined, and extends only to apprentices mentioned in that clause; and there neither surgeon nor mountebank is mentioned. And though a surgeon may be a trade within the statute, which a man cannot exercise without serving an apprenticeship to, because that clause of the statute is general; yet this part of the statute relating to the discharge of apprentices, extends only to trades there mentioned. *Per Cur.* As to the first, the discharge of the servant is by consequence a discharge of the master; and as to the second, the clause of the statute relating to the discharge of apprentices, is general, and goes to all manner of apprentices, even to those of merchants, as it was adjudged in *Hawksworth's* and *Hillary's* case, 1 *Saund.* 314. But afterwards the court was of opinion, that the power of discharging reaches only to the trades mentioned in the statute, among which a surgeon is not mentioned; for that though as to the serving seven years apprenticeship, a surgeon comes under the general terms of arts and mysteries, yet the power of discharging reaches only to the trades particularly mentioned, and this point was not stirred in *Hillary's* case; and in *Watkins's* case, 2 *Keb.* 182. *Hale* chief justice was of another opinion.

The justices at their sessions discharged one *Philip Dallo* from his master, a glass-bottle-maker. It appeared, there was a blank left for the time he was to serve in the counter-part of the deed; but the article the apprentice signed was right. Sir *Peter King*: If the indenture be right, which the apprentice signed, it is sufficient. It is for nine years; the law allows no such term. A glass-bottle-maker is not one of the trades mentioned in the statute; and it extends but to those, according to the case of the King *v. Gately*, in 5 *Mod.* Quashed, *nisi*.

Power to discharge apprentices, extends only to such trades as are specially named in the statute. 2 *Salk.* 471. *Mich.* 7 *Will.* 3. *Rex v. Gately.*

*Stat.* 5 *Eliz.* extends only to those trades mentioned in it. *Caf. of* *setl. and rem.* 29. *Mich.* 12 *Ann. Queen and Furness.*

Exception



Stat. 5 Eliz.  
extends to  
trades not  
mentioned in  
it.

Lord Raym.

1410.

Stran. 663.

Mich 12 G.1.

The King v.

Collingbourn.

Exception was taken to an order of discharge, that the justices could not discharge the apprentice, because the trade to which he was bound, *viz.* a glazier, was not within the statute: but not allowed; for though formerly it was held, that the trade ought to be a trade within the statute, yet the latter resolutions have been otherwise.

*If any such master*] [See page 60, *sect.* 35.] That is, any such master as is before mentioned in this statute, in the trades therein specified; and the former resolutions confined the sense of the statute to *such* trades only, but the latter adjudications seem to extend the equity thereof to other trades not mentioned in the statute, as in the foregoing instances. *1 Burn 68.*

A man cannot  
send his ap-  
prentice be-  
yond sea, ex-  
cept he be  
with him.  
Brownl. 67.  
Hil. 13 Jac.  
Covenry v.  
Windal.

*Shall misuse or evil intreat his apprentice*] See page 60. *sect.* 35. An action of debt brought upon a writing, thereby shewing that whereas one *T.* before the sealing of that writing had become bound to the defendant, to stay with him, and serve him as an apprentice for the term of eight years, and *Woodall* covenants with the plaintiff, that he before such a day would receive and take the said apprentice for the residue of the said term of eight years then to come, and would teach, keep, and employ the said apprentice in his house and service in the art and mystery of chirurgery, which the said *Woodall* then used and professed, if the said *T.* should so long live, and binds himself in twenty pounds. The plaintiff alledged that the defendant did receive the said apprentice in service at *London*, &c. and further says, the defendant within the time, to wit, such a day and year, sent the said apprentice in a certain voyage, in a ship called the *Dragon*, from the house of the defendant, unto the *East-Indies*, there to stay; and that the apprentice did there arrive, and doth yet there remain, for which he brings his action. The defendant pleads, that he, for the better instruction of the apprentice, sent the apprentice to the *Indies*, to use and exercise his art; and to this the plaintiff demurs, and judgment for the plaintiff, that the defendant could not send the apprentice out of *England*, except himself went with him, although it be in his own house, and his own proper service; but clearly he might send his apprentice to *Chester*, or any other part of *England*.

And generally, no man can force his apprentice to go out of the kingdom, except it be so expressly agreed, or that the nature of his apprenticeship doth import it, as if he be bound apprentice to a merchant-adventurer, or a sailor, or the like. *Hob. 135.*

Apprentice  
cannot be dis-  
charged with-  
out appear-  
ance or sum-  
mons of the  
master.

2 Stran. 1013.

East. 8 Geo 2.

Rex v. Eaf-

man.

Using him

unkindly is

not sufficient.

An order was made at the sessions, for discharging an apprentice; the master having used him unkindly, and refusing to provide for and entertain him. *Et per curiam*, This order must be quashed, not for want of an original jurisdiction in the sessions, which has been often allowed them; but because it does not appear the master was present or summoned, which it is plain the act intended he should be. Besides, there is another fault, which is, that the reason given in the order is not a ground for their proceedings; for there is a power to oblige the master to receive and entertain him, and using him unkindly is too loose. *Vide Trin. 12 Geo. 1. Rex v. Davie, Stran. 704.*

Or

*Or the apprentice do not his duty to his master*] See page 60. *sect. 35.* The Sessions cannot discharge apprentices on account of sickness. 1 Stran. 99. *Trin. 4 G. 1.* *Joseph Higgin* was bound out by indenture as the statute requires, to *John Parks*, and being lame, and having the king's evil, and in the opinion of surgeons incurable: therefore the sessions discharge the master from his apprentice, and four justices sign the order. *Darnall*, serjeant, moved to confirm the order, because the master cannot now have the end of the binding, which was the service of his apprentice. *Willes contra.* The statute only impowers the justices to discharge for misbehaviour, and not for sickness. Besides, allowing they had a power to discharge, yet here they have not executed it as the statute requires; for it is not inrolled; neither is it mentioned to be by a justice of the *quorum*. There must be four justices, one of the *quorum*. Both exceptions to the form were held good. But the court quashed the order as to the substance, for the master takes him for better and worse, and is to provide for him in sickness and in health. *Rex v. Inhabitants de Hales Owen.*

*Shall repair unto one justice*] See page 60. *sect. 35.* The justices may force a master to take an apprentice, for by the statute the justices are to put them out, and therefore must be construed to have consequentially a power to compel the master to receive him; and if the master turn him away, they can make him refund. 1 *Lew. 91.* Upon an order made at the sessions to discharge the apprentice, it did not appear that he applied himself first to a justice of peace, and *Holt Ch. J.* was of opinion the justice has power to make an order, and if obeyed by the master, then the sessions can have no power: if disobeyed, then the justice upon complaint may bind the master to the sessions; and that the sessions have no power otherwise. *Turton and Gould. cont.* That he could not bind over. *Adjournatur.* Justices may force a master to take an apprentice; *Per Holt Ch. J.* that the sessions have not originally jurisdiction to discharge apprentices. 1 *Salk. 67.* *Hil. 11 W. 3.* *Anon.*

Exception was taken to an order for discharging an apprentice, 1st, That the complaint was made originally at sessions without any previous application to a single justice out of sessions. And 2dly, That the justices had ordered money to be returned. And now *Holt Ch. J.* delivered the resolution of the court, That the order was good. If it had been a new question, he should have held a prior application to some justice out of sessions necessary, but after so many orders affirmed in this court, which have been otherwise, 'tis too late to unsettle that now. As to the second point, he never doubted that, for it is a power consequential upon their jurisdiction to discharge. Sessions may discharge apprentice by original order, and order money to be returned. 1 *Salk. 68.* *Trin. 13 Will. 3.* The King *v. Johnson.*

*Per Curiam:* It has been so often resolved, that the sessions has an original jurisdiction to discharge apprentices; that we will not now suffer it to be made a question, though it might be doubtful upon the statute itself. But in these orders it must be set forth, that the master appeared, or was summoned, as was held *Pasch. 10 Annæ, Regina v. Rutter*, and for want of this the order was quashed. Sessions has an original jurisdiction to discharge apprentices. 1 *Stran. 143.* *Hil. 5 Geo. 1.* *Rex v. Gill.*

Order of sessions for discharging an apprentice was quashed, the only reason given for the discharge being, that the master declared in open court he would not take him again. It was agreed to be a point not now to be disputed, Apprentices not to be discharged without a reason. 1 *Stran. 704.* *Trin. 12 G. 1.* *Rex v. Davie.*

## Apprentices.

disputed, but that the sessions had an original jurisdiction to discharge apprentices.

A. is bound apprentice to B. who is a freeman of the city of London, and A. is bound and inrolled there, then goes and lives with his master in Middlesex. The justices of the peace for the county may discharge him. 1 Stran. 663. Mich. 12 G. 1. Rex v. Collingburn.

*Or to the mayor or other head-officer*] See page 60. *sect.* 35. This was an order of sessions made at *Hicks's Hall*, for the discharge of an apprentice to a freeman of the city of *London*, and who was bound and inrolled there: and the order being removed hither, there were these exceptions taken to it. 1. That the apprentice was bound and inrolled in *London*. 2. Not bound by the justices. 3. Not a trade within the statute, he being a glazier. To these exceptions it was answered, that the clause of the statute 5 *Eliz. c. 4. s. 35.* enacts, "That if any master shall misuse his apprentice, he shall repair unto one justice of the peace where he dwelleth, &c." And *sect.* 40. provides, "That the customs of *London* and *Norwich* shall be saved." *Sect.* 35. has always received a large construction in favour of the jurisdiction of justices, for though upon the master's complaint no power is given to the justices to discharge, yet in 24 *Car. 2. 1 Saund. 313. 1 Vent. 175. Hawksworth and Hillarie's case*, it is held, that it was reasonable, and within the intent of the statute, that an apprentice should be discharged from an ill master, as well as a master should be discharged from an ill apprentice; and in 1 *Mod. Wilkins v. Edwards* there is the same point, and in 1 *Vent. 174. 1.* The first and principal question is, whether the court of sessions at *Hicks's Hall* have any jurisdiction to discharge an apprentice to a freeman of *London*; or whether he is not to be discharged only by the mayor's court? It is found that the apprentice lived with his master out of the city of *London*, and within the jurisdiction of the justices of *Middlesex*. To this exception it was answered, that the statute does not regard where the binding or inrolling is, but gives the jurisdiction expressly to the justices of peace where the master lives; and if this did not belong to the justices of *Middlesex*, where the master lives, there would be a failure of justice; for neither the chamberlain, or any other city magistrate, have power to compel the master's appearance before them. 2. To the second exception it was said, that it was immaterial where the apprentice was bound, for the same reason. 3. And to the third exception it was said, that formerly indeed it was a doubt, whether the statute did extend to all trades; but of late it hath been settled and agreed, that it does. *Salk. 471. Palm. 526. 2 Keb. 822. Rex v. Taunton, Hil. 6 Geo.* The court affirmed the order of discharge, and said they would not take away the jurisdiction of the mayor's court, but only give a concurrent jurisdiction to the justices of the peace for the county. And it would be very inconvenient, to have apprentices to a freeman of *London*, who are bound there, and who live in distant countries, obliged to come up to the mayor's court to get themselves discharged. And the words of the statute are very plain; for they give the jurisdiction to the justices where the apprentice lives.

Order for discharging apprentice, the master not appearing.

*And upon his appearance and bearing the matter*] See page 60. *sect.* 35. Mr. *Eyre* moved to quash an order for the discharge of an apprentice: the question arose upon the clause of the statute, which directs, that upon the appearance of the master the apprentice may be discharged by four justices,

tices, after the next justice hath endeavoured to compose the matter in difference. In this case it was objected, that *Ditton* the master was bound over to appear, and did not; and the justices have but a limited jurisdiction; and it is expressly directed by the act, that this discharge is to be made on the appearance of the master; besides, there is another remedy to proceed on the recognizance, which is forfeited by not appearing.

*Per Cur'*: The act must have a reasonable construction, so as not to permit the master to take advantage of his own obstinacy; and it would be very hard, that supposing the master is profligate and runs away, the apprentice shall never be discharged: afterwards exception was taken, because it appeared upon the face of the order, that *Ditton* was a collar-maker, & *non constat* what the trade is, nor that it is within the statute; like *Comfort's* case, where one was bound to a mantuamaker, when there was no such trade within the statute, nor at the time of the statute: and in this case it was said, that the justices might make the master make restitution of part of the money, and that it hath been so adjudged.

The justices at the sessions order an apprentice, who had been ill used, and not provided for, to be discharged, and that the master having received 5*l.* with him, should refund 3*l.* as a further provision for him. This was moved to be quashed, because the 5 *Eliz. c. 4. sect. 35.* which gives the justices power to discharge apprentices upon complaint to them, gives them no authority to order any money to be returned. *Per curiam*: it is very hard, that if the master misuses his apprentice the next day after he is bound, he should pay back nothing if he is discharged. It will be an encouragement to masters, to treat their apprentices ill, but the statute being silent, the order must be quashed. *Salkeld* 68. It was held, that the justices might order money to be returned, as a consequence of their power to discharge. *Ibid.* 67, 490.

Justices can not order money to be returned on discharge of an apprentice. 1 *Stran.* 69. Mich. 4 *Geo.* 1 *Rex v.* Wakefield.

But this doctrine of refunding seems to be now established, as founded in great reason, tho' not expressly mentioned in the act; for the justices being authorized to discharge according to their discretions, when the end of the apprenticeship cannot be attained with one person, it is but justice the master should return part of the money he has received with his apprentice, to place him out with a new master.

Doctrine of refunding established. 3 *Bac. Abr.* 550.

It was held, that an order on the master to return money is good, tho' it is not averred, that he had any with the apprentice; for the order being to return money is a necessary proof of the receipt of it, and the justices in their orders are not obliged to set forth all the steps they take in their proceedings, there being nothing in the act which makes it necessary; and there is a known and established distinction between orders and convictions. *id.*

Order on the master to return money, good. 3 *Bac. Abr.* 550. Trin. 7 *G. 2.* The King v. Amies.

*The following is a report of the preceding case from a manuscript.*

In *Easter Term* 6 *Geo. 2.* Mr. *Strange* moved to quash an order of session at *Norwich*, for discharging an apprentice to a carpenter, upon an exception that this was not a trade within the stat. 5 *Eliz.* and he cited *Rex* and *Gately*, *Salk.* 471. where it is held, that the sessions has power to discharge apprentices to those trades only, which are mentioned in the

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statute. *Page justice*: I deny that no trades are within the meaning of that statute but what are mentioned in it. *Strange*. A distinction has been always taken between the clause in the statute relating to one's serving seven years, as an apprentice, and that relating to the discharging apprentices; for in the first case the words of the act being general, have been construed to extend to other trades, than what are mentioned in the act. But in the latter case, the words are more particular, and have been construed to extend to those trades only, which are mentioned in the act. *Cur'*: Shew cause. This case coming on again in *Trin.* term 6 & 7 *Geo.* 2. Mr. *Fortescue* said, that four exceptions had been taken to this order. 1st, That the trade of a carpenter is not within the act. 2dly, That it does not appear that the master had any money of the apprentice's in his hands. 3dly, That the sessions has no power to order the master to pay back the money he received from his apprentice. 4thly, That it does not appear there was any appearance, or that the master was summoned. As to the fourth, the order states that on motion and hearing counsel, &c. and that is a reasonable intendment he did not appear; and this is not like an order made by one justice, who must set forth every thing: for the sessions being a court of record, what is done there will be intended to be reasonable. In *Salk.* 67. and 490. 'tis adjudged that the master's appearance is not necessary; and 'tis likewise there held that the sessions has a power, to order the master to return the money; and there is no occasion for a summons; for the master is to take notice of it himself. As to the third, the cases above cited prove the sessions have a jurisdiction.—The justices have power to put out an apprentice, and therefore must, in reason, have a power of making the master repay the money, on the discharge. The act was made in favour of apprentices; and if the justices had no such power, the master would be in a better case, than before the act. As to the second, tho' it is not expressly said that the master had money, yet the order says he shall return and pay back the sum of, &c. and that could not be, if he had not received it. As to the first, the cases of *Salk.* 471. 1 *Saund.* 313. 2 *K.* 822. prove that the stat. 5 *Eliz.* extends to other trades, besides what are there mentioned; and that clause is penal, and yet extended liberally; and therefore *a fortiori* in this case. But the 30th *sect.* mentions the trade of a carpenter; and *sect.* 35. gives power to discharge *such* an apprentice from his master.

*Strange*. As to the fourth exception, the order does not say on hearing counsel on both sides, or that evidence was given by both parties; so that for any thing appears, it might be on one side only, like the case of motions here; therefore every word in this order may be true, and yet the master may not have been heard. 'Tis necessary that the master appear, for otherwise 'tis proceeding *ex parte*. Tho' the justices may proceed without appearance, yet they can't till the party has been summoned; and so was the case of *Queen* and *Simpson*. As to the third exception, that argument can extend only to apprentices bound out by justices, which does not appear here; and he might be bound out by his own relations. As to the second exception, 'tis often said that this court will  
intend

intend nothing in the case of inferior jurisdictions; and this is admitted to be so only by implication. As to the first exception, he owned the word *such* in the 30th *sect.* must relate to the trade of the carpenter before-mentioned, so gave up the exception.

*Page justice*: I think this is a good order. As to the fourth exception, the sessions has no occasion to set it out, for this court will intend it. If he was summoned, tho' he did not appear, yet that is sufficient; and the sessions has no occasion to set out the summons. As to the second exception, 'tis plain by intendment that the master must have received the money, for the words *return and pay back*, necessarily import it. As to the third exception, it would be the means of great oppression, if the justices had not power to make the master return the money; for that might be an encouragement to the masters, to use their apprentices ill, that they might be discharged from them; and so get more money by taking another.

*Probyn justice*: A carpenter is a trade within the act. The consequence of the justices having a power to discharge apprentices is, that they may discharge them on such terms as they think proper; and the power of ordering the master to return the money, is incident to the power given by the act, to discharge the apprentice; for otherwise the master would receive the benefit by his own wrong.—I am not satisfied as to the notice; for it appears that this was an original application to the sessions. In cases of inferior jurisdictions nothing can be supported by intendment; and tho' upon the stating the order the most natural construction of the word is, that *both* parties were heard, yet we can't intend it. 'Tis held that in convictions, a summons is necessary to be set out, but not in orders; but I think it ought to be set out in both cases.

*Lee justice*: The act does not oblige the sessions to set forth their power, and the natural construction of the act is, that there should be a prior application to the justices; but it is now settled that there is no occasion for it, for the act is taken to be *directory*, and not *compulsory*. Summons and notice are of the essence of justice, and the sessions are supposed to have done it; and therefore I do not think, the sessions has occasion to set it out; for it is to be presumed, unless the contrary appears. *Cur. advise vult.*

The petitioner, on the 10th of *January* 1744, was put apprentice to *Money ordered to be re-*  
*Ward*, a bookseller at *York*, and the sum of 80*l.* was given with him as funded by the  
an apprentice for seven years. In *July* following a commission of bank- court of  
ruptcy was taken out against *Ward*; and being declared a bankrupt, Chancery.  
assignees were chosen, who sell off the bankrupt's effects, and he is now 1 *Atkyns's*  
the supervisor of the press to the purchaser, and become incapable of per- Rep. 149.  
forming his part of the contract, nor is the petitioner able to raise any In Chan. Jan.  
money to put him out apprentice to another master; and the commission 22d, 1745.  
being a recent one, probably no dividend may be made in a year, or a  
year and half; so that all this time will be lost to the petitioner. Upon  
these circumstances, the petitioner prayed, that on deducting 10*l.* out of  
the 80*l.* for his board with the bankrupt during the six months he lived  
with him, the assignees might be ordered to pay him 70*l.* out of the

effects of the bankrupt already come to their hands, and not oblige him to prove it as a debt under the commission. The lord chancellor *Hardwicke* was at first doubtful, and seemed inclined to grant the petition, but on ordering search to be made for precedents, and several being produced wherein it was directed that apprentices should come in as creditors only; after deducting for the time they lived with the bankrupt, upon the remaining sum; it was ordered accordingly in this case, and that the petitioner should be admitted a creditor for 70*l.* only. *Tracy Atkins. Ex parte Sandby.* See further, where a court of equity will oblige a master to refund, 1 Vern. 460. 2 Vern. 64, 492.

Debt lies at Westminster on a penal statute, but an indictment or information in the proper county only. 1 Lev. 249. Mich. 20 Car. 2. Barrs against Hughes.

In any of the Queen's majesty's courts of record—by action of debt] See page 62. *sect.* 39. Debt on the statute of 5 *Eliz.* brought in the King's Bench, for using the trade of a grocer at *Salisbury*, and sent and tried by *Nisi prius* at *Salisbury*: and after verdict for the plaintiff on *nil debet*, 'twas moved in arrest of judgment, That the action did not lie in this court, but ought to have been brought and tried wholly in the proper county, by the statute 23 *Car.* 1. And for this were cited *Hillary* 23 *Car.* 1. *B. R. Rot.* 611. *Mich.* 13 *Car.* 1. *B. R. Bretburgie* against *Hascall*, and *Mich.* 1654. *Child* against *Bull*, and *Trin.* 1652. *Rot.* 1377. *Bunton* against *Sbalate*. But on the other side, 'twas said, That the action of debt did not lie at the sessions or assizes in the country; and the stat. 5 *Eliz.* gives the recovery by action of debt as well as by indictment or information; and the statute 21 *Jac.* 1. does not concern the statute of 5 *Eliz.* in any part; and therefore the statute of 21 *Jac.* 1. is to be taken by referring particulars to particulars, viz. by indictment or information (which will lie there) in the proper county, but for action of debt (which will not lie in the proper county) in the superior courts, where it will lie; and for this were cited 1 *Cro. Farrington* against *Keymer*, and *ibid.* *Green* against *Gray. Latch* 192. 1 *Roll. Abr.* 537. *Trin.* 1653. *B. R. Hodges's* case. And if it should not be so, there might be a failure of justice; as if the party offends against the statute in one county, and goes and lives in another county, and the information or indictment is laid in the proper county, for there the party cannot be brought in to plead: but for debt in the superior court he may be brought in hither out of any county, and the issue is to be tried by *Nisi prius* in the proper county. And of that opinion were all the judges, viz. *Kelynge*, *Twysden*, and *Moreton*, *Wyndham* being dead; and after the case had been twice argued at the bar, they gave judgment for the plaintiff in *Hillary* term next following; and they said, That the statute of 21 *Jac.* 1. was not made to oust actions of debt on penal statutes, but to give such remedies for them in the proper county as may be had there: but afterwards in *Mich.* 29 *Car.* 2. the contrary opinion was held in the King's Bench, between *Clappe* and *Edgewcombe*; [which is reported in 2 *Lev.* 204. in manner following.]

Debt upon stat. 5 *Eliz.* ought to be laid in the

Debt was brought in *B. R.* upon stat. 5 *Eliz.* for using a trade in *Devonshire*, which was sent by *Nisi prius* and tried in *Devonshire*, for the plaintiff; and now it was moved in arrest of judgment, that the action should have

have been brought as well as tried in *Devonshire*. To which it was answered, that in *Hughes and Barnes's* case it was resolved, that debt lay in this court; but it was replied, that after that case, it was adjudged in the case of *Nicholls and Cockinell*, in the time of *Hale Ch. J.* that the action ought to be brought in the proper county; upon which the court ordered the case to be put in the paper.

*Holt Ch. J.* reported the opinion of all the judges in this case. An action of debt was brought in the *King's Bench* on 5 *Eliz. c. 4.* by a common informer, for exercising a trade, not having served as an apprentice; and the question was, If the jurisdiction of the *King's Bench* was taken away by 21 *Jac. 1.* for it was thought fit to settle it, because of the case of *Barnes and Hughes*, 1 *Vent. 8.* 1 *Lev. 249.* And it was resolved by the opinion of eleven of the judges, 1st, That 21 *Jac. 1.* restrains the jurisdiction of the *King's Bench*, in actions of debt by common informers, and that they cannot bring debt upon the statute in the *King's Bench*, unless the cause of action arise in the county where the *King's Bench* sits, but must in other cases prosecute by information, &c. before justices of assize, &c. as the statute directs. 2dly, It was resolved, that where a remedy is given by action of debt, &c. in any court of record, &c. by any later statute, subsequent to 21 *Jac. 1.* such action is not restrained; for the said statute of 21 *Jac. 1.* does not extend to such actions, but stands repealed as to them. But the chief justice declared, that his own private opinion was, That where any subsequent act gives any popular action, it must be laid in the proper county within the equity of 21 *Jac. 1.* *Hale Ch. J.* was always against the opinion of *Barnes and Hughes*; and the principal objection in that case was, that the party offending might get out of the county, and so escape the punishment of the law, as being out of their jurisdiction: But by *Holt Ch. J.* this objection does not hold, for there may be process of outlawry sued out against him: the statute of 21 *Jac. 1.* giving the same process that lay in actions of trespass *vi & armis* at common law; and therefore neither debt nor information, tho' exhibited by the attorney general, lieth here, but in *Yorkshire*, which is the proper county in this case.

*And that the said justices*] See page 62. *sect. 39.*—By stat. 31 *Eliz. c. 5. sect. 7.* it is enacted, “That all suits for using any art or mystery in the which the party hath not been brought up according to the statute in that behalf made, (5 *Eliz. c. 4.*) shall be sued and prosecuted in the general quarter-sessions of the peace, or assizes of the same county where the offence shall be committed, or otherwise enquired of, heard and determined in the assizes or general quarter-sessions of the peace of the same county where such offence shall be committed, or in the leet within which it shall happen, and not in any wise out of the same county where such offence shall happen or be committed.”

Mr. *Eyre* moved to quash an indictment for exercising the trade of a goldsmith not having served seven years apprenticeship, for this exception, *viz.* That it was found at a quarter-sessions for a borough, whereas

Indictment upon 5 *Eliz.* may be found at a borough by sessions.



1 Salk. 370. by the statute 31 *Eliz. c. 5.* it ought to be at the quarter-sessions of the county. But the court held, the indictment might be at the sessions of a borough, tho' it had been otherwise ruled heretofore in several other cases.

An indictment was found at the sessions of the peace of the corporation of *Wells* in *Somersetshire* against the defendant for having used a trade, not having served as an apprentice for seven years. And being moved into the *King's Bench* by *certiorari*, it was quashed because the justices at such sessions have not jurisdiction to take such indictments.

Indictment upon 5 *Eliz. c. 4.* taken at the sessions in a corporation, quashed. 2 *Ld. Raym.* 767. *East.* 1 *Ann.* *Regina v. Taylor.*

Indictment on 5 *Eliz. c. 4.* found at the sessions for the city of *Carlisle*, held good. 1 *Bur. Rep.* 251. *Hil.* 30 *Geo.* 2. *Rex v. Strong.*

Mr. serjeant *Poole* shewed cause against quashing an indictment on 5 *Eliz. c. 4. sect. 31.* (for exercising a trade, not having served an apprenticeship therein) found at the sessions for the city of *Carlisle*. Mr. *Norton* had on 27th *November* 1756 moved to quash it, upon an objection that the city sessions had no jurisdiction. And he had cited, in the proof of it, the case of *Regina v. Taylor*, 2 *Ld. Raym.* 767. where such an indictment was quashed, "because the borough sessions had no jurisdiction to take such indictments." He insisted that only the quarter-sessions of the county have jurisdiction. The indictment in that case of *Taylor*, was found at the sessions for the corporation of *Wells*; and moved hither by *certiorari*. Lord *Mansfield*, at the time of the original motion, looked into the act of 5 *Eliz. c. 4.* and said that this act [*sect. 39.*] expressly gives the power to mayors or other head-officers of cities or towns corporate, at their sessions. And now, upon shewing cause, the court was unanimously of that opinion. The case of the *Queen* against *Taylor* was in *Easter* term 1702: and is contradicted by that of *Regina v. Franklyn* in 2 *Ld. Raym.* 1038. which was determined in *Mich.* 3 *Ann.* 1704. though it is in 1 *Salk.* 370, by mistake, put under *Michaelmas.* 3 *Will. & Mar. Per Cur.* Rule discharged.

Information, *qui tam*, for exercising a trade, contrary to 5 *Eliz. c. 4.* not having served an apprenticeship, may be laid at a parish. 1 *Bur. Rep.* 366. *Trin.* 30 & 31 *Geo.* 2. *Ball, qui tam v. Cobus.*

Mr. *Whitaker* shewed cause against quashing an information *qui tam*, for exercising the trade of a baker at the parish of *Speldhurst* in *Kent*, not having served an apprenticeship; contrary to 5 *Eliz. c. 4.* The 1st objection taken to this information by Mr. *Clayton* on the original motion was, "That *Speldhurst* does not appear to be a city, market-town or corporation: it may be a village." For supporting which, he had cited 2 *Keble* 583. *Rex v. French*; (1st exception.) which case is also reported in 8 *Mod.* 26. *S. C. Rex v. Turnith*; and 1 *Vent.* 51. *S. C.* But though these are all reports of the same case (which was cited by Mr. *Clayton*, only out of *Keble*,) yet Mr. *Whitaker* alledged that they are inconsistent with each other. Mr. *Clayton, contra* — The act was intended merely for the benefit of corporations: and it has always been taken, that it does not extend to any village, or any place less than a city, market-town, or corporation, (*Barnesford* thought otherwise, in 1 *Mod.*) and it would be extremely inconvenient to the inhabitants of all distant retired villages, if it did. Lord *Mansfield* — The question is not now upon the evidence; but upon the laying the offence. Have you any authority that it may not

be laid at a *parish*? Mr. Clayton—None but that in *Keble*; (*viz.* 2 *Keble* 583.) Lord Mansfield—There is nothing in the act that restrains it to be laid in a city, market-town, or corporation: and this *laying* it in a *parish* will not affect the evidence. Mr. just. Denison expressed himself in terms exactly to the same effect. Mr. just. Foster—Many trades are carried on in *villages*: Most of the *cloth-trade* in *Yorkshire*, is carried on in the *villages*. Mr. Clayton offered another objection, *viz.* That it was not averred that he did not *then* exercise the trade, (namely, at the time of making the act.) But the court (without any hesitation) over-ruled this objection. So that, (both objections being over-ruled,) the rule to shew cause why the information should not be quashed, was discharged.

*Shall be within the age of one and twenty years*] See page 63. *sect.* 43. It seems clearly agreed, that by the common law infants, or persons under the age of twenty-one years, cannot bind themselves apprentices, in such manner as to intitle their masters to an action of covenant, or other action, for departing their service, or other breaches of their indentures; which makes it necessary, according to the usual practice, to get some of their friends to be bound for the faithful discharge of their offices, according to the terms agreed on. [And therefore it became necessary to make the provision in *sect.* 42. of the act 5 *Eliz.* *viz.* that infants shall be bound by their own covenants. But this seems to be understood only where they are compelled to be bound by the means prescribed by this statute; as appears by the following case.]

Covenant against an apprentice for departing from his service without licence, within the time of his apprenticeship. The defendant pleaded, That at the time of the making the indenture, he was within age: and thereupon it was demurred: and it was argued at the bar, that this indenture should bind the infant, because it was for his advantage to be bound apprentice, to be instructed in a trade; he is also compellable by the statute of *quinto Elizabethæ Regine*, to be bound out an apprentice: but all the court resolved, That although an infant may voluntarily bind himself apprentice; and if he continue apprentice for seven years, he may have the benefit to use his trade: yet neither at the common law, nor by any words of the statute of *quinto Elizabethæ*, a covenant or obligation of an infant for his apprenticeship shall bind him. But if he misbehave himself, the master may correct him in his service, or complain to a justice of peace, to have him punished, according to the statute: but no remedy lieth against an infant upon such covenant; and therefore it was adjudged for the defendant.

Covenant on an indenture of apprenticeship, wherein the plaintiff covenanted with the father and son (the apprentice), and they on the other side covenanted with him (the plaintiff), and this action was brought jointly against the father and the son; for that the son had covenanted faithfully to account at his master's (the plaintiff's) request, for all such of his master's (the plaintiff's) goods as should come into his hands; and the breach assigned was, that the defendant (the son) hath not accounted,

By the common law, persons under 21 cannot bind themselves apprentices.

11 Co. 89. b.  
2 Inst. 379, 380.  
3 Leon. 63.  
Farell. 15.

A covenant or obligation of an infant for his apprenticeship shall not bind him.  
Cro. Car. 179.  
Hil. 5 Car. 1.  
Gilbert v. Fletcher.

If his father or other person doth covenant for an apprentice, such covenant shall bind the father or such other person, if the appren-

tice be like-  
wife bound.  
8 Mod. 190.  
Mich. 10  
Geo. 1.  
Whitley v.  
Loftus.

accounted, &c. Upon *non infregerunt conventionem* pleaded, the plaintiff had a verdict; and now it was moved in arrest of judgment. (1.) That the declaration was ill, because the plaintiff did not set forth any request made to the son to account, which he ought to have done, that the defendant might have an opportunity to traverse it. Besides, this being a joint action against the father and the son, and the breach assigned only against the son, cannot maintain this judgment. Neither ought the action to be brought against the father; for he did not covenant, that his son should truly account, &c. he only covenanted for himself separately, to pay the money which he was to give to the plaintiff for taking the son apprentice; and the clause in the latter end of these articles is in the singular number, (*viz.*) That each of them (the father and son) binds himself for the true performance thereof; so that the father cannot properly be said to be bound for his son, but only for himself.

It was argued on the other side, that this was a *covenant* entered into by the master (the plaintiff) on one part, and by the son with the consent of his father on the binding part, but by both father and son as to all other purposes; for tho' the son is only bound apprentice, yet they both covenant for the true performance of all covenants, &c. the words in the close of the articles being, (*viz.*) That each of them binds himself, &c. for the true performance of all the covenants and agreements therein mentioned. And even from the nature of these covenants, the father is always bound for the son; for otherwise masters could not rely on the covenants of their sons, who are commonly under age, and so by law not capable to consider what covenants to make; and consequently in this case the father shall be taken to covenant for the performance of his son's part as well as his own. The court was of opinion, that the very end of binding the father was to answer the wrong which might be done by the son to his master, therefore he (the father) must be obliged for his son's true performance of the articles; 'tis true, at the end of the articles the covenant is in the singular number, (*viz.*) That each of them did bind himself; and it must be so where the son is bound to perform the thing for which the covenant was made; and this clause is usually inserted, that the covenants may be taken distributively, (*viz.*) That each of the covenanters should perform his part; and this makes the covenant of the son bind the father, who covenanted for him as well as for himself. So the plaintiff had his judgment.

Covenant be-  
tween the  
master and a  
third person,  
the servant  
not being  
party, makes  
no apprentice-  
ship.  
2 Salk. 478.  
Trin. 9 Will.  
3. The case  
of Chester-  
field.

*Ferrison* was a servant to Sir *Paul Jenkinson* in *Waltham*; afterwards he left his service, and was put out by his master Sir *Paul Jenkinson*, to a barber in *Chesterfield*, who was to teach him to shave and make periwigs, for which he was to have 5*l.* from Sir *Paul*: *Ferrison* continued a year in this employment, according to covenants between Sir *Paul* and the barber, to which *Ferrison* was no party; and the court adjudged that this did not make a settlement at *Chesterfield*, because it was no service; and that the said *Ferrison* was thereby no more than a boarder there for his education, which is no service to make a settlement.

**Stat. 5 Eliz. c. 5.** [*A. D. 1562. intituled,*] “An act touching politick constitutions for the maintenance of the navy.” **Stat. 5 Eliz. c. 5.**

*Señ. 12.* “Be it also enacted by the authority aforesaid, that from henceforth it shall be lawful to all and every owner and owners of ships or vessels; and to every householder, using and exercising the trade of the seas by fishing, or otherwise, and to every gunner or gunners, commonly called cannoneers, and to every shipwright, to take and keep one or more apprentice or apprentices to be brought up in the said trade or trades, every of the same apprentice or apprentices to be to them bound for ten years or under: (2) And every apprentice so taken, being above seven years of age, shall be by the same covenants bound, ordered, and used to all intents, according to the custom of the city of *London*; so that the same covenant or bond of apprenticeship be made by writing indented, and inrolled in the town where the same apprentice shall be then inhabiting, if it be a town corporate; and if the town be not incorporate, then to be inrolled in the next town incorporate to the habitation of every such apprentice: (3) And that the officers of every such town corporate, shall take for every such inrolment not above twelve pence; any law, statute, or other matter whatsoever to the contrary notwithstanding.”

Owners of ships, fishers on the sea, gunners and shipwrights, may take apprentices.

**Stat. 43 Eliz. cap. 2.** [*A. D. 1601.*] *señ. 5.* “And be it further enacted, that it shall be lawful for the said churchwardens and overseers, or the greater part of them, by the assent of any two justices of the peace aforesaid, to bind any such children, (whose parents shall not be thought able to keep and maintain them,) to be apprentices, where they shall see convenient, till such man-child shall come to the age of four and twenty years, and such woman-child to the age of one and twenty years, or the time of her marriage; the same to be as effectual to all purposes, as if such child were of full age, and by indenture of covenant bound him or herself.”

43 Eliz. c. 2. Binding of poor children apprentices.

**Stat. 1 Jac. 1. cap. 17.** [*A. D. 1604.*] *señ. 3.* “No person or persons shall make, or cause to be made any felt or hat, of or with any wool or other stuff whatsoever, unless he or they shall have first served as apprentices in the foresaid trade or art of felt-making, during the space of seven years at the least; neither shall they retain or set to work in the said art any other person and persons than journeymen, that have already served in that art, and apprentices lawfully bound in the said trade or art, nor above the number of two apprentices at one time, nor those for any less term than seven years; upon pain to forfeit five pound for every month that he shall continue offending contrary to the true meaning of this act, and to be recovered to the uses and in manner aforesaid.”

1 Jac. 1. c. 17. Felt makers to have no more than two apprentices.

*Señ. 5.* “Provided always, that nothing in this act, or in the said former act contained, shall extend to charge any person or persons lawfully exercising the said art, with any pain or forfeiture, for setting or using his or their own natural son or sons to the making or working of

hats or felts in his or their own house or houses, so as every such son or sons be bound by indenture of apprenticeship for the term of seven years at the least, which term shall not be to expire before he shall be of the full age of two and twenty years; any thing aforesaid to the contrary notwithstanding.

7 Jac. 1. c. 3. Stat. 7 Jac. 1. c. 3. [*A. D. 1609. intituled,*] “An act for the continuing and better maintenance of husbandry and other manual occupations, by the true employment of monies given and to be given for the binding out of apprentices.”

How money  
given for the  
binding of  
poor children  
to occupati-  
ons, shall be  
bestowed.

“Forasmuch as the true labour and exercise of husbandry, and the bringing up of apprentices of both sexes in trades and manual occupations, are things very profitable in the commonwealth, and acceptable and pleasing unto Almighty God, there being already great sums of money freely given, and more in time to come like to be given by divers well-disposed persons, unto the corporations of divers cities, boroughs, towns corporate, and unto divers persons in sundry towns not corporate, and parishes within this realm of *England*, to be continually employed in the binding out as apprentices, of a great number of the poorest sort of children unto needful trades and occupations; the experience whereof hath brought forth very great profit and commodity unto those cities, towns and parishes where any parts of the said monies have been so given and employed, and so no doubt there will constantly ensue thereof the exceeding good of the commonwealth in general: (2) And for that the most part of the poorer sort of children, would (as heretofore) without such good care and assistance be brought up in idleness, and disordered kinds of life, to their utter overthrow, and to the great prejudice of the whole commonwealth: (3) And for that it is very likely that many other well-disposed people will be the better encouraged, willingly to follow the like good example in bestowing of good sums of monies to the same good and godly purposes, if it might be so provided, that such monies as have been already so freely given, or as hereafter shall be given for the binding out of such poor children apprentices, may continually hereafter remain, and be wholly employed accordingly.

How money  
given for the  
binding out of  
apprentices of  
poor children  
shall be em-  
ployed, and  
by whom.

SECT. 2. “Be it therefore enacted by the king’s most excellent majesty, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that all sums of money so freely given at any time within three years last past, or hereafter to be given by any person or persons, to be continually employed for the binding out of apprentices, as aforesaid, shall for ever from henceforth continue, and be from time to time used and employed to such uses, intents and purposes only, and by such persons, and in such manner and form as shall be hereafter by this present act specified and declared, except the same have been, or shall be otherwise ordered or disposed by the givers thereof; that is to say, (2) That all corporations of all cities, boroughs and towns corporate, by what name or names soever they shall be known

known or incorporated, and in towns and parishes not incorporate, the parson or vicar of every such town or parish, together with the constable or constables, the churchwarden or churchwardens, collectors, and the overseers for the poor of the time being, or the most part of them, where any such sum or sums of money are already given, or shall be hereafter given to be so employed, shall from time to time within the said several cities, boroughs, towns and parishes respectively, have the nomination and placing of such apprentices, and the guiding and employment of all such monies as have been heretofore so given, or which hereafter shall be given, to and for the continual binding forth of such and so many apprentices, and in such sort as is already, or shall hereafter be so given and appointed, either by the last will and testament, or by any writing or writings under the hands and seals of any person or persons which hath already, or hereafter shall so give any sum or sums of monies unto the good and godly purposes and intents aforesaid: (3) and if the corporation of any such cities, boroughs or towns corporate, by what name or names soever they shall be called or incorporated, or any the person or persons in the other towns and parishes above-mentioned, appointed by this act to have continually the guiding and employment of such sums of monies so already given, or hereafter to be given to the intents and purposes aforesaid, shall at any time hereafter wilfully forbear or refuse, according to their duties in this behalf, to employ such sums of money so given, or to be given, as aforesaid, for the binding out of such apprentices, by means of which wilful forbearance or refusing, the said money shall not be employed accordingly; that *then* they and every of them, so offending contrary to this act, shall forfeit for every such offence, the sum of three pounds six shillings and eight pence lawful *English* money; the one half whereof to be given to the poor of the town or parish where such fault or offence shall be done or committed; the other moiety to the party that shall sue for the same; (4) and that every man that will, may and shall be admitted to sue for the same moiety; for the use and benefit of the said poor, and shall be also admitted to sue for the forfeiture of the other moiety in any of the king's majesty's courts of record, to his own benefit and behoof, by action of debt, bill, plaint or information, wherein no protection, wager of law or essoin shall be admitted or allowed.

The forfeiture of those, who of duty ought, and yet refuse to employ the money.

*Sec. 3.* And for that all monies so given may the better continue to and for the purposes aforesaid, Be it enacted by the authority aforesaid, that the master, mistress or dame of every such apprentice or apprentices that shall receive any such sum or sums of money, as aforesaid, shall become bound with one or two sufficient sureties, by bond or obligation in double the sum which they and every of them shall so receive with such apprentice or apprentices, as aforesaid, unto the corporation of any such city or town corporate, by what name or names soever they shall be called or incorporated, or to such person or persons in the other towns and parishes not incorporated, appointed by this act to have continually the guiding and employment of all such sums of money so already given, or hereafter to be given to the intents and purposes aforesaid, respectively; upon condition

The party which receiveth the money, shall be bound with sureties to repay it.

## Apprentices.

to repay such sum or sums of money, as he or she shall receive with such apprentice or apprentices, at the end of seven years next ensuing the date of the said obligation, or within three months next after the end of the said seven years: (2) and if such apprentice shall happen to die within the said space of seven years, then within one year after his or her said death; (3) and if the master, mistress, or dame to whom any such apprentice or apprentices shall be bound, shall happen to die within the said space of seven years, then within one year next after his or her death; (4) so as the said monies may be again employed for placing such apprentice with some other person of the same trade, to serve out the residue of the years of his or her former apprenticeship, by the discretion of the said persons trusted, as aforesaid.

Within what time the money shall be put forth.

A provision if there be not fit persons in that parish to be apprentices.

*Señ. 4.* “ And be it farther enacted by the authority aforesaid, that every such sum or sums of money so given, or to be given in manner and form, and to and for the good uses and intents aforesaid, shall always be put forth and employed by the parties aforesaid, that by this act shall have the disposing and employment thereof, within three months at the furthest, after such money shall come to the hands of the said parties, that by the intent and true meaning of this act ought to dispose and employ the same; (2) and if at such times there shall not be found fit and apt persons to be bound out apprentices, as aforesaid, within the said cities, towns and parishes where such sums of money are or hereafter shall be given to be employed, as afore is declared; then such of the poorest children of any of the parishes next adjoining, shall be bound apprentices in manner, as aforesaid, as by the care and good discretions of the parties, which by this act have the disposing and employment of the said sums of money in the cities, towns and parishes where it was first given to be employed, shall be thought fit and convenient, taking such bonds and obligations of the persons that shall receive the said sums of money so put forth, and with such sureties, and upon such conditions, as is above-mentioned and declared.

What sort of persons shall be apprentices.

*Señ. 5.* “ Provided always, and be it enacted by the authority aforesaid, that choice from time to time be made of the poorest sorts of children of every such city, town and parish where such monies shall be so given, and whose parents are least able to relieve them: (2) and that no such apprentice shall be above the age of fifteen years when he or she shall be so first bound out an apprentice.”

Account shall be made of the money imployed.

*Señ. 6.* “ And for the better execution of this act, be it further enacted by the authority aforesaid, that all and every person and persons appointed by this act, to have the employing and disposing of any sum or sums of money so given or to be given, as aforesaid, within any town or parish not corporate, shall after the end of this present session of parliament, once every year in the *Easter*-week, or within one month next after *Easter*-day, make a true and perfect account before four, three, or two justices of the peace dwelling in or next to every the said towns or parishes, of all such sum and sums of money as they or any of them have employed in binding of apprentices, by virtue of this act, and of all bonds and obligations taken for the payment thereof;

thereof; and also of all such sums of money as then shall happen to be remaining in their hands not employed: (2) and also shall at the making and yielding up of the said account, or within ten days then next following, yield and deliver up unto such as shall happen next to succeed them, or then to be in the said rooms and places, all such obligations and bonds as by them or any of them have been before that time taken to the uses aforesaid; as also all sums of money remaining in their or any of their hands, to be employed, as aforesaid, and not employed at the time of the yielding up of the said account."

*Stat.* 7. "And further be it enacted by the authority aforesaid, that if any of the parties appointed and trusted by this act to have the disposing and employment of any of the said sums of money so given or to be given, as aforesaid, shall in any point or degree break the trust and confidence in them in this behalf reposed, or shall commit any other misdemeanor or offence in misemploying of the said sums of money, or any part thereof, or in doing any other act or acts contrary to their duties, and the true intent and meaning of this act, for which there is not by this act any penalty given or appointed, then it shall and may be lawful for any person or persons whatsoever, in the behalf of the poor of such city, borough or parish, to exhibit his petition to the lord chancellor, or lord keeper of the great seal of *England*, for the time being, touching the same: which lord chancellor, or lord keeper of the great seal of *England*, for the time being, shall thereupon have full power and authority to award a commission out of the high court of Chancery, under the great seal of *England*, to such and so many persons as his lordship shall think meet, to enquire hear and determine the said offences, and every of them: (2) and if the said commissioners, or the most part of them shall find, that any sum or sums of money so given or to be given, are lost, impaired, wasted or diminished, then they or the most part of them shall likewise have power, by virtue of this act and of their said commission, to rate, raise and collect the said sum of money so lost, impaired, wasted or diminished, upon such person or persons in places not incorporate, as by this act are appointed to have the guiding and ordering of the said monies, if they or any of them have failed in their said duties in that behalf, or otherwise upon the able inhabitants of such city, town or parish where the same shall so happen, as in the discretion of the said commissioners, or the greatest part of them shall be thought fittest, and to return the said commission, and the manner of the execution thereof, into the said high court of Chancery within three months next after the execution thereof: (3) and if any person or persons shall find himself grieved by any thing done by the said commissioners, then upon complaint thereof made in the high court of chancery, the said lord chancellor or lord keeper for the time being, shall have full power and authority to order and decree the same, as to his lordship shall be thought most fit to stand with equity and good conscience.

*Stat.* 21 *Jac.* 1. c. 28. [*A. D.* 1623.] "And be it enacted, that all persons to whom the overseers of the poor shall, according to 43 *Eliz.* bind



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any children apprentices, may take and receive, and keep them as apprentices; any former statute to the contrary notwithstanding."

3 Car. 1. c. 4. **Stat. 3 Car. 1. c. 4.** [*A. D.* 1627.] "And be it enacted, that all persons, to whom the overseers of the poor shall, according to 43 *Eliz.* bind any children apprentices, may take and receive, and keep them as apprentices; and also that the churchwardens and overseers of the poor, mentioned in the said act made in the said 43d year, may, by and with the consent of two or more justices of the peace, whereof one to be of the *quorum*, within their respective limits, wherein shall be more justices than one; and where no more shall be than one, with the assent of that one justice of the peace, set up, use and occupy any trade, mystery, or occupation, only for the setting on work, and better relief of the poor of the parish, town or place of, or within which they shall be churchwardens or overseers of the poor; any former statute to the contrary notwithstanding."

8 & 9 Wil. 3. **Stat. 8 & 9 Will. 3. c. 30.** [*A. D.* 1697. *intituled,*] "An act for supplying some defects in the laws, for the relief of the poor of this kingdom."

43 *Eliz.* c. 2. **Stat. 5.** "And whereas by an act made in the three and fortieth year of the reign of queen *Elizabeth*, intituled, *An act for the relief of the poor*, it is amongst other things enacted, that it shall be lawful for the churchwardens and overseers of the poor of any parish, or the greater part of them, by the assent of two justices of the peace, whereof one to be of the *quorum*, to bind poor children apprentices, where they shall see convenient; but there being doubts whether the persons to whom such children are to be bound, are compellable to receive such children as apprentices, that law hath failed of its due execution: Be it therefore enacted and declared by the authority aforesaid, that where any poor children shall be appointed to be bound apprentices, pursuant to the said act, the person or persons, to whom they are so appointed to be bound, shall receive and provide for them, according to the indenture signed and confirmed by the two justices of the peace, and also execute the other parts of the said indentures; and if he or she shall refuse so to do, oath being thereof made by one of the churchwardens, or overseers of the poor, before any two of the justices of peace for that county, liberty, or riding, he or she shall for every such offence forfeit the sum of ten pounds, to be levied by distress and sale of the goods of any such offender, by warrant under the hands and seals of the said justices, the same to be applied to the use of the poor of that parish or place where such offence was committed; saving always to the person, to whom any poor child shall be appointed to be bound an apprentice, as aforesaid, if he or she shall think themselves aggrieved thereby, his or her appeal to the next general or quarter sessions of the peace for that county or riding, whose order therein shall be final, and conclude all parties."

Poor children bound apprentices pursuant to the act 43 *Eliz.* c. 2. those to whom they are bound, to provide for them according to the indenture signed by the justices, &c. Penalty on offender. Persons to whom poor children are bound, being aggrieved, may appeal to the justices.

*Minchamp* being a merchant at *Mile-end*, two justices bound a poor girl apprentice to him; he appealed to the sessions, and the order was discharged; because they thought it unfit to compel a merchant to take an apprentice; and now this court on consideration of the matter, confirmed the order of sessions; because the late act having made persons *compellable* to take apprentices, and given an appeal to the sessions, it was in the discretion of the justices at sessions to determine, whether it was or was not fitting to put an apprentice upon any one; and therefore the court would not disturb what the sessions had done, but confirmed the order.

An order was made by justices for *Wagstaff* to take a poor child apprentice, and sign an indenture, by which, *inter alia*, he covenants to give the child two suits of cloaths, &c. This case is not within the act, because it says the children of poor persons; but this order says, it was a poor child, and yet it may have parents able to maintain it. Secondly, the age of the child does not appear. Thirdly, Mr. *Wagstaff* is such a person as the justices cannot oblige to take a poor child, for it does not appear that Mr. *Wagstaff* is a housekeeper, so that it may be he was a lodger, and though the act says, as the overseers should think fit, yet that must have a reasonable construction; the act says, they shall put them apprentices as they think fit; that does not extend to the terms, but only to what sort of children, but the terms are left to the law; here is a covenant that he shall at the end of the term give him two suits of cloaths; they might as well have ordered that he should have given him a hundred pounds. It appears that Mr. *Wagstaff* is a gentleman, an attorney, 3 *Keb.* 3 *Mod.* 269. At law it is a question upon the statute 43 *Eliz. c. 2.* whether a person could be compelled to take an apprentice till 8 *Ann. c. 9.* 9 *Ann. c. 21.* but still you cannot compel every person, but only ordinary trades, or men of husbandry. *Chief justice*: There is no occasion to describe the child farther than the act requires; but the providing two suits of cloaths has no relation to his being apprentice. Mr. *Fortescue*: It is proper to have indentures; and this is a covenant very proper, because 8 & 9 *Will. c. 30.* gives a power to the justices to appoint what terms they think fit; for the person is to receive the child according to such indentures as shall be signed by the justices, so that the indenture is to be settled by the justices. *Chief justice*: At that rate the justices may make a covenant to give him a house, and allow him twenty pounds *per annum*; the indentures are in point of time, and other things properly relating to an apprentice; they may appoint him necessaries during his apprenticeship. The order quashed.

**Stat. 2 & 3 Ann. c. 6.** [*A. D. 1703. intituled,*] “ An act for the increase of seamen, and better encouragement of navigation, and security of the coal trade.”

“ Whereas the giving due encouragement to such of the youth of this kingdom, as shall voluntarily betake themselves to the sea service, and practice of navigation, and obliging others, who, by reason of their own or their

Justices at sessions are proper judges, whether fit to oblige a person to take an apprentice, or not.  
2 Salk. 491.  
Trin. 13 W.  
3. B. R.  
Minchamp's case.  
Men of ordinary trades, or of husbandry, are compellable only to take apprentices.  
1 Sess. Caf. 48.  
Mich. 12 An.  
The Queen against Wagstaff.

Parish boys  
may be put  
out appren-  
tices to the  
sea service,

to masters of  
ships, &c.

Boy's age to  
be inserted in  
his indenture,  
&c.

their parents poverty, are destitute of employment, or any lawful means whereby to maintain themselves, may greatly tend to the increase of able and experienced mariners and seamen, for the service of her majesty's royal navy, and for the carrying on the trade and commerce of this kingdom: Be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the five and twentieth day of *March* in the year of our Lord one thousand seven hundred and four, it shall and may be lawful to and for two or more justices of the peace, in their several and respective counties, ridings, or divisions, as also to and for all mayors, aldermen, bailiffs, and other chief officers and magistrates of any city, borough, or town corporate, within her majesty's kingdom of *England*, dominion of *Wales*, and town of *Berwick* upon *Tweed*, and likewise to and for the churchwardens and overseers of the poor (for the time being) of the several and respective parishes within the places aforesaid, by and with the consent and approbation of such justices of the peace, mayors, aldermen, bailiffs, or other the chief officers or magistrates aforesaid, to bind and put out any boy or boys, who is, are, or shall be of the age of ten years, or upwards, or who is, are, or shall be chargeable, or whose parents are or shall become chargeable to the respective parish or parishes wherein they inhabit, or who shall beg for alms, to be apprentice and apprentices to the sea service, to any of her majesty's subjects, being masters or owners of any ship or vessel used in sea service, and belonging to any port or ports within the kingdom of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed* aforesaid, for so long time, and until such boys shall respectively attain or come to the age of one and twenty years; and such binding out any such apprentice shall be as effectual in the law, to all intents and purposes, as if such boy were of full age, and by indenture had bound himself an apprentice: And to the end that the time of the continuance of the service of such apprentice or apprentices may the more plainly and certainly appear, the age of every such boy, so to be bound apprentice, shall be mentioned and inserted in his indentures, being taken truly from a copy of the entry in the register book, wherein the time of his being baptized is or shall be entred (where the same can or may be had) which copy shall be given and attested by the minister, vicar, or curate of such parish or parishes, wherein such boy's baptism shall be registred, without fee or reward, and may be writ upon paper or parchment without any stamp or mark; and where no such entry of such boy's being baptized can be found, two or more of such justices of the peace, and such mayors, aldermen, bailiffs, or other chief officers shall, as fully as they can, inform themselves of such boy's age, and from such information shall insert the same in the said indentures; and the age of such boy so inserted and mentioned in the said indentures (in relation to the continuance of his service) shall be taken to be his true age, without any further proof.

*Señ. 2.* “ And be it further enacted by the authority aforesaid, that the churchwardens and overseers of the poor, for the time being, of the several and respective parishes, from whence any such boy shall be bound apprentice to the said service, as aforesaid, shall pay down to such master, to whom the boy is bound, at the time of his binding, the sum of fifty shillings, to provide necessary clothing and bedding for sea service, for such boy; and the charges by this act appointed shall be allowed to the said churchwardens and overseers on their accounts.

Churchwardens to pay down 50 s. for boy's necessary clothing, &c. and be allowed the same in their accounts.

*Señ. 5.* “ And be it further enacted, that the churchwardens and overseers of the parish, out of which any such boy shall be bound an apprentice, shall send the said indentures to the collector of her majesty's customs, residing at or belonging to any port or ports within this kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, whereunto such masters or owners of ships or vessels, to whom such apprentice or apprentices shall be bound, do or may belong; who shall, in a book or books to be by him kept for that purpose, fairly enter, from time to time, all and every indenture and indentures, whereby such apprentice and apprentices shall be bound, and which shall be so sent unto him, and shall make an indorsement upon the said indentures of the registry thereof, subscribed by the said collector, without taking any fee or other reward for the same: And every such collector, neglecting or refusing to enter such indentures, and indorse the same, or making false entries, shall forfeit the sum of five pounds for the use of the poor of the parish, from whence such boy was bound apprentice: And all and every such collector or collectors, or his or their lawful deputy or deputies, of the said several and respective ports, shall from time to time transmit certificates in writing, under his or their hands, to the lord high admiral of *England*, or to the commissioners of the admiralty for the time being, containing the names and ages of every such apprentice respectively, and to what ship he belongs; and upon receipt of such certificates, protections shall, from time to time, be made and given for such apprentices, till they attain their several and respective ages of eighteen years, without any fee or reward to be taken for the same; which certificates, so as aforesaid to be given, are not required to be writ upon stamp paper or parchment.

Apprentices indentures to be sent to the collector at the port whereunto his master belongs  
Collector to enter the same gratis, &c.

Penalty on collector neglecting.

Lord admiral to grant protections for such apprentices, gratis.

*Señ. 6.* “ And be it further enacted by the authority aforesaid, that all and every person and persons, to whom any poor parish boy hath been, or hereafter shall be, put apprentice, according to the statute made in the forty-third year of the reign of queen *Elizabeth*, may, with the consent and approbation of two or more justices of the peace of the same county, and dwelling in or near the same parish where such poor boy was bound apprentice, or by and with the consent and approbation of any mayor, alderman, bailiff, or other chief officer or magistrate of any city, borough, or town corporate, where such poor boy was bound apprentice, at the request of the master or mistress, then living, of such apprentices, or his or their executors, administrators, or assigns, by indenture, assign and turn over such poor boy apprentice to any master or owner of any such ship or vessel, using the sea service as aforesaid, for and during the then remain-

43 Eliz. c. 2.

Parish boys bound apprentices, may be

turned over to the sea service.

Indentures of assignment to be registred.

Altered by 4 Annæ, c. 19. f. 16.

Masters of ships, &c. obliged to take such apprentices.

By 4 Ann. c. 19 f. 16. no master shall be bound to take a boy under 13 years of age, &c.

And to give an account of their names, &c.

How apprentices shall be conveyed to the ports to which their masters belong.

11 & 12 W. 3. c. 18.

The counterparts of their indentures to be transmitted to the churchwardens, &c.

ing time of his apprenticeship; which assignment and assignments of such apprentices, so as aforesaid, shall be, and are hereby declared to be good and effectual in the law: All which indentures of assignment are hereby directed to be registred, and certificates thereof given and transmitted by such collector, at the said several ports where such parish apprentices shall be so assigned over, and bound to the sea service, in manner and form aforesaid; and upon receipt of such certificates, protections shall from time to time be made and given for such apprentices (so to be assigned over, as aforesaid) till they shall attain their several and respective ages of eighteen years, without fee or reward for the same, in like manner as aforesaid.

*Sec. 8.* “ And for the better providing such apprentices with masters for the said service: Be it further enacted by the authority aforesaid, that all and every of her majesty’s subjects, being masters or owners of any ship or ships, vessel or vessels, used in the sea service, as aforesaid, of the burthen of thirty tun to the burthen of fifty tun, be obliged to take one such apprentice, and one more for the next fifty tun, and one more for each and every hundred tun, such ship or vessel shall exceed the burthen of one hundred tun: And such master or owner of any ship or vessel, refusing to take such apprentice or apprentices, as aforesaid, shall forfeit the sum of ten pounds for the use of the poor of the parish from whence such boy was bound apprentice.

*Sec. 9.* “ And be it further enacted, that every master or owner of such ship or ships, vessel or vessels, so obliged to take such apprentice or apprentices, after his arrival into any port or ports aforesaid, and before he clears out of such port, shall give an account in writing, under his hand, to the collector of such port to which he belongs, containing the names and number of such apprentices as are then remaining in his service.

*Sec. 10.* “ And for the better conveying and conducting all and every such apprentice and apprentices, so to be bound as aforesaid, to his and their respective master and masters: Be it further enacted by the authority aforesaid, that all and every such apprentice and apprentices shall, from time to time, be severally and respectively sent, conducted, and conveyed to the several and respective ports, to which his or their master shall respectively belong, by the churchwardens and overseers of the poor, or their agents, of the parish from whence such apprentice is bound, and the charges thereof to be in the same manner, as is provided by an act of parliament made in the eleventh and twelfth years of the reign of his said late majesty king *William* the third, intituled, *An act for the more effectual punishment of vagrants, and sending them whither by law they ought to be sent.*

*Sec. 11.* “ And it is hereby directed, that the counterpart of all and every such indentures, to be executed by the several and respective masters of all such apprentices, shall be sealed and executed in the presence of, and attested by, the collector at the port aforesaid (where such apprentices shall be bound or assigned over) and the constable or other officer, who shall bring or convey such apprentices to the said several, and respective masters; which constables or officers last mentioned shall transmit and

convey the counterparts of such indentures to the churchwardens and overseers of the several parishes from whence such apprentices shall be bound, by the same ways and means as such apprentice or apprentices were conveyed to the said several and respective ports.

*Sett.* 12. “ And be it further enacted by the authority aforesaid, that two or more justices of the peace of the respective counties, and dwelling in or near any of the ports aforesaid, and all mayors, aldermen, bailiffs, and other chief officers and magistrates of any city, borough, or town corporate, in or near adjoining to such port or ports, to which such ship or vessel shall at any time arrive, shall have full power and authority, and are hereby authorized and empowered to inquire into, and examine, hear, and determine all complaints of hard or ill usage from the several and respective masters, to such their apprentice and apprentices, so to be bound or assigned over, as aforesaid, and also of all such as already have, or who shall at any time hereafter voluntarily put themselves apprentices to the sea service, as aforesaid, and to make such orders therein, as now they are enabled by law to do in other cases between masters and apprentices. Justices to determine complaints between masters and apprentices.

*Sett.* 13. “ And be it further enacted by the authority aforesaid, that every such collector in every port or ports aforesaid, shall in their several and respective stations, keep an exact register, containing as well the number and burthen of all such ships and vessels, together with the masters or owners names, as also the names of such apprentices in each ship and vessel belonging to their respective ports, and from what parishes and places such apprentices were respectively sent; and that such collector shall transmit true copies of such register, signed by them, to the quarter sessions, or to such cities, boroughs, towns corporate, parishes, or places, when and so often as they shall be reasonably required so to do; for which copy or copies, so to be transmitted as aforesaid, no fee or reward shall be taken: And that every such collector refusing or wilfully neglecting to transmit such copies, as aforesaid, shall for every such refusal or neglect forfeit five pounds for the use of the poor of the parish, from whence such boy was bound apprentice. Collector to keep a register, &c. and transmit a copy thereof to the quarter sessions, &c. gratis.

*Sett.* 14. “ And be it further enacted, that every custom-house officer or officers, at each and every of the ports aforesaid, shall insert, and are hereby required, from time to time, to insert at the bottom of their cockets, the number of men and boys on board the respective ships or vessels, at their going out of every such port, therein particularly describing the apprentices by their respective names, ages, and the dates of their several indentures, for which no fee or reward shall be taken. Officer to insert on the cocket, the number of men and boys on board, &c.

*Sett.* 15. “ And for the encouragement of such as have, or shall voluntarily bind themselves apprentices to the sea service: Be it further enacted by the authority aforesaid, that all and every such person and persons, who have or shall so voluntarily, and of his or their own accord, bind or put him or themselves apprentice to any such masters or owners of any ship or vessel, as aforesaid, shall not be compelled or impressed into her majesty's sea service, or the sea service of her majesty's heirs or successors, for and during the term of three years, to be accounted from the dates of the Persons voluntarily binding themselves apprentices to sea service, not to be impressed for three years. Explained by

4 Ann. c. 19. f. 17. Indentures to be regiltred, and protections given for the said three years. respective indentures of such voluntary apprentice or apprentices; all which indentures are hereby directed to be regiltred, and certificates thereof given and transmitted by such collector at the said several ports, where such apprentices already have become so bound, or that hereafter shall so bind themselves, in manner and form as aforesaid; upon receipt of which said several certificates, protections shall, from time to time, be made and given, for the said first three years of their several respective apprenticeships, without either fee or reward for the same.

When such apprentices shall be impressed, masters to have able seamen's wages for them. *Sett.* 17. "And whereas owners and masters of merchant ships are at great charge in educating and bringing up the parish children, till they come to the age of eighteen years, and other voluntary apprentices three years, at which time they are capable to serve in her majesty's ships of war: Be it enacted by the authority aforesaid, when such apprentices shall be impressed, or voluntarily enter themselves into her majesty's service, the said owners or masters of such apprentices, their executors, administrators, or assigns, shall be intitled to able seamen's wages for such of their apprentices, as shall upon due examination be found qualified for the same, notwithstanding their indentures of apprenticeship.

Penalties and forfeitures, how to be levied. *Sett.* 18. "And be it further enacted by the authority aforesaid, that all the penalties and forfeitures directed by this act shall, by warrant under the hands and seals of any two or more justices of the peace of the same county, city, borough, or town corporate, be levied by distress and sale of the goods and chattels of the offender, which sale shall be good in the law against such offender."

4 Ann. c. 19. 2 & 3 Ann. cap. 6. No master of ship to take apprentice under thirteen years old. *Stat.* 4 Ann. c. 19. [A. D. 1705.] *sett.* 16. "And whereas by an act made in the second year of her majesty's reign, intituled, *An act for the increase of seamen, and better encouragement of navigation, and the security of the coal-trade*, provision is made for putting out of parish children apprentices to masters of trading ships and vessels at the age of ten years: It is hereby enacted, that no such master shall be obliged to take any such apprentice under the age of thirteen years, or who shall not appear to be fitly qualified both as to health and strength of body for that service; and any widow of the master of such ship or vessel, or the executor or administrator of such master, who shall have been obliged to take such parish-boys apprentice to them, shall have the same power of assigning over such apprentices to any other masters of ships or vessels, who have not their complement of apprentices required by the said recited act, to be entertained by them, as is given by the said act to such persons as have taken children apprentices, in pursuance of the statute made in the forty-third year of queen *Elizabeth*."

43 Eliz. c. 2.

8 Ann. c. 9. *Stat.* 8 Ann. cap. 9. [A. D. 1709. intituled,] "An act for laying certain duties upon candles, and certain rates upon monies to be given with clerks, and apprentices, towards raising her majesty's supply, for the year 1710."

*Seft.* 32. " And be it further enacted by the authority aforesaid, that there shall be, throughout the kingdom of *Great Britain*, raised, collected and paid to her majesty, her heirs and successors, the further rates, duties and sums of money following, that is to say, the duty, rate, or sum of six pence, for every twenty shillings, of every sum of fifty pounds or under; and the duty, rate or sum of one shilling, for every twenty shillings, of all and every sum and sums amounting to more than fifty pounds, which shall, at any time or times, from and after the first day of *May* one thousand seven hundred and ten, and during the term of five years, from thence next ensuing, be given, paid, contracted or agreed for, with or in relation to every clerk, apprentice, or servant, which shall be, within the kingdom of *Great Britain*, put or placed to or with any master or mistress to learn any profession, trade, or employment, and proportionally for greater or lesser sums; which said duties, rates, and sums shall be paid by the said masters or mistresses respectively.

From 1 May 1710. 6d. for every 20s. of 50l. or under, and 12d. for every sum of above 50l. to be paid for every clerk or apprentice put out, for five years; made perpetual by 9 Ann. c. 21. sect. 7. To be paid by the master.

*Seft.* 35. " And be it further enacted by the authority aforesaid, that from and after the said first day of *May* one thousand seven hundred and ten, the full sum or sums of money received, or in any wise directly or indirectly given, paid, agreed, or contracted for, during the term aforesaid, with or in relation to every such clerk, apprentice, and servant, as aforesaid, shall be truly inserted and written in words at length, in some indenture or other writing, which shall contain the covenants, articles, contracts, or agreements, relating to the service of such clerk, apprentice, or servant, as aforesaid, and shall bear date upon the day of the signing, sealing, or other execution of the same; upon pain, that every master or mistress, to or with whom, or to whose use, any sum of money whatsoever shall be given, paid, secured, or contracted, for or in respect of any such clerk, apprentice, or servant as aforesaid, which shall not be truly and fully so inserted and specified in some such indenture, or other writing, shall, for every such offence, forfeit double the sum so given, paid, secured, or contracted for; the one moiety of which forfeitures, shall be to her majesty, her heirs or successors, and the other moiety, with full costs, to any person or persons who shall inform and sue for the same, by action of debt, bill, plaint, or information, in any court of record at *Westminster*, or in the *Exchequer* of *Scotland*, at any time after the executing, making, or signing any such indenture or writing, or making any such contract or agreement, and within one year after the time limited or appointed for the service of any such clerk, apprentice, or servant, to or with such master or mistress, shall be expired.

The full sum given with an apprentice, &c. to be inserted in the indenture, &c. on forfeiture of double the sum.

*Seft.* 36. " And be it further enacted by the authority aforesaid, that the said commissioners for managing the said duties on stamp vellum, parchment and paper, shall, before the said first day of *May* one thousand seven hundred and ten, provide two new stamps to be used in pursuance of this act, (over and besides the stamps heretofore requisite, for or in respect of such indenture, or other writing, by virtue of the statutes in that case made,) the one of which new stamps shall denote the said duty of six pence in the pound, and the other of the said new stamps shall denote the

Two new stamps to be provided, &c.



## Apprentices.

the said duty of one shilling in the pound; and that all such indentures, or other writings, containing the sums truly given, paid, agreed, or contracted for, as aforesaid, which shall, within or during the said term of five years, be entred into, executed, or signed, within the cities of *London* or *Westminster*, or within the limits of the bills of mortality, shall be brought to the head-office for stamping or marking of vellum, parchment and paper, and the duties hereby charged and payable for the sums therein to be inserted, as aforesaid, shall be paid to the receiver general for the time being, of the said duties on stampt vellum, parchment and paper; and upon such payment thereof, the same shall be stamped with one of the said new stamps, as the case shall require, within one month after the respective dates thereof.

Indentures to be brought to the head-office, &c. in two months after date,

and there the duty to be paid, and indenture stampt, &c. or the collector to indorse a receipt, &c.

Within what time indenture shall be stampt.

*Seet. 37.* “ And be it enacted by the authority aforesaid, that all the said indentures, and other writings, which shall or ought to contain the whole sum truly given, paid, agreed, or contracted for, as aforesaid, which shall, within or during the said term of five years, be entred into, executed, or signed, in any part of *Great Britain*, (not being within the limits of the said weekly bills of mortality) shall (at the option of the party concerned) be brought or sent, either to the head-office within the limits of the said weekly bills, or else to some of the collectors, appointed or to be appointed for her majesty’s duties upon stampt vellum, parchment and paper, who shall reside without the limits of the said weekly bills, in *England*, *Wales*, or the town of *Berwick* upon *Tweed*, or to some of the officers to be appointed for the duties by this act granted in *Scotland*, within two months after the date, execution, or signing of every such indenture, or writing respectively: And upon producing of every such indenture or writing, either at the said head-office, or to such collector or other officer, as aforesaid, her majesty’s duties hereby granted, shall be paid, either to the said receiver general at the said head-office, or to such collector or other officer as aforesaid: And in case the said payment shall be made to the immediate hands of the receiver general in the said head-office, for her majesty’s use, then the indenture or writing, for which such payment shall be made, shall be forthwith stamped with one of the said new stamps, as the case shall require: And in case such payment shall be made to the hands of such collector, or other officer, without the limits of the said weekly bills, the same collector or other officer, is hereby required to endorse on such indenture, or other writing, a receipt for the monies so paid, in words at length, bearing date the day on which such payment shall be made, and to subscribe his name thereto, (to the intent that he may thereby be charged with every sum so paid to him) and forthwith deliver back the said indenture or writing so endorsed to the bringer thereof.

*Seet. 38.* “ And it is hereby enacted by the authority aforesaid, that every such indenture, or writing so end ried (in case the same be entred into, executed or signed within the space of fifty miles, to be computed from the limits of the said weekly bills of mortality) shall, within three months after the date or making thereof, and if the same be entred into, executed or signed in any part of *Great Britain* at a greater distance from the

the limits aforesaid, shall, within six months after the date or making thereof, be brought or sent to the said head-office, where the same (being produced with the said receipt endorsed) shall be immediately stamped with one of the said new stamps, as the case shall require, by the officer appointed, or to be appointed, for that purpose.

*Sec. 39.* “ And be it further enacted by the authority aforesaid, that all such indentures or writings, as aforesaid, wherein shall not be truly inserted and written the full sum and sums of money received, or in any wise directly or indirectly given, paid, secured, or contracted for, with, or in relation to such clerk, apprentice, or servant, as aforesaid, or whereupon the duties payable by this act shall not be duly paid, or lawfully tendred, or which shall not be stamped, or lawfully tendred to be stamped, according to the tenor and true meaning of this act, within the respective times herein for that purpose severally and respectively limited, shall be void, and not available in any court or place, or to any purpose whatsoever; and the clerk, apprentice, or servant, whom the same shall concern or relate to, shall in such case be utterly incapable of being free of any city, town, corporation, or company, and of following or exercising the intended profession, trade, or employment; any charter, law, or custom to the contrary notwithstanding.”

Indentures, in which the full sum received, is not charged, &c. void;

And clerk, &c. incapacitated.

*Sec. 40.* “ Provided always, that nothing in this act contained shall be construed to extend to charge any master or mistress with the payment of any of the said duties, in respect of any money by him or her received with any apprentice or servant, who shall be put or placed out at the common or publick charge of any parish or township, or by or out of any publick charity, or to require the stamping with any such new stamp, as aforesaid of any indenture, articles, covenant, agreement, or contract relating to such apprentice or servant as last mentioned; any thing herein contained to the contrary notwithstanding.

Parishes or publick charities not charged.

*Sec. 43.* “ And be further enacted by the authority aforesaid, that no indenture or writing required by this act to be stamped, as aforesaid, shall be given or admitted in evidence in any suit to be brought by any of the parties thereunto, unless such party, on whose behalf the same shall be given or admitted in evidence, do first make oath, that to the best of his or her knowledge, the sum or sums therein for that purpose inserted or mentioned was or were really and truly all that was directly or indirectly given, paid, secured, or contracted for, on behalf or respect of such clerk, apprentice, or servant, to or for the benefit of the master or mistress, to or with whom such clerk, apprentice, or servant was put or placed.

No indenture to be admitted in evidence, unless oath made, that the sums were really paid, &c.

*Sec. 45.* “ And be it declared and further enacted by the authority aforesaid, that from and after the said first day of May one thousand seven hundred and ten, and during the said five years, where any thing or things, not being lawful money of Great Britain, shall directly or indirectly, be given, assigned, conveyed, delivered, contracted for, or secured, to or for the use or benefit of any master or mistress, with or in respect of any such clerk, apprentice, or servant, for whom a duty is chargeable by this act; the duties hereby granted and last mentioned, shall be answered and paid, for

Where any thing shall be given to any master, not being money, the full value of such thing to be answered for the duties.

for the full value or values of such thing or things, and the same duties for the said values, shall be secured and answered in the same manner and form, and under the like pains, penalties, forfeitures and incapacities, as are before in this act provided for securing the said rates upon monies given or paid, or agreed to be given or paid, with such clerks, apprentices or servants, as aforesaid.

9 Ann. c. 21.  
Masters here-  
after omitting  
to forfeit 50l.

**Stat. 9 Ann. c. 21.** [*A. D.* 1710.] *sect.* 66. “ And it is hereby further enacted by the authority aforesaid, that if any master or mistress shall hereafter neglect to pay the said rates or duties (upon monies given, paid, or contracted for with clerks and apprentices) within the respective times herein, and by the said former act for that purpose limited, according to the true intent and meaning of the same, every such master and mistress shall, for every such neglect, forfeit the sum of fifty pounds; the one moiety thereof to her majesty, her heirs and successors, and the other moiety thereof with full costs of suit, to such person or persons as shall inform and sue for the same, in any of the courts at *Westminster*, for such neglect committed in *England*, *Wales*, or *Berwick upon Tweed*, or in the court of exchequer in *Scotland*, for any such neglect there, by action of debt, bill, plaint or information, wherein no essoin, protection, or wager of law, or any more than one imparlance shall be allowed.

18 Geo. 2.  
c. 22.  
Further penal-  
ties for not  
paying the said  
duties;

**Stat. 18 Geo. 2. c. 22.** [*A. D.* 1745.] “ *sect.* 24. And for the better enforcing the payment of the rates and duties directed to be levied and paid by the acts; [*viz.* 8 *Ann. c.* 9. and 9 *Ann. c.* 21.] it is hereby further enacted by the authority aforesaid, that from and after the twenty-fourth day of *June* in the year of our lord one thousand seven hundred and forty-five, if any master or mistress shall neglect to pay the said rates and duties for clerks, apprentices or servants, within the respective times, in and by the former acts limited and appointed in that behalf, according to the true intent and meaning of the same; every such master and mistress shall, for every such neglect, forfeit and pay double the rates and duties charged and directed to be paid and levied by the said former acts, or either of them (over and above all penalties and forfeitures thereby inflicted) for all monies which shall at any time or times, after the said twenty-fourth day of *June* one thousand seven hundred and forty-five, be given, paid, contracted or agreed for, with or in relation to every such clerk, apprentice or servant; which said penalties and forfeitures, directed to be levied by this present act, shall be paid by the said masters or mistresses respectively, and shall be recovered, paid and applied, in such and the same manner as any penalties or forfeitures, inflicted by the said former acts, or either of them, are thereby directed to be recovered, levied, paid or applied.

how to be re-  
covered.

20 Geo. 2.  
c. 19.

**Stat. 20 Geo. 2. c. 19.** [*A. D.* 1747.] *Made, among other purposes,* “ for the better regulation of certain apprentices.”

*sect.* 3. And be it further enacted by the authority aforesaid, that it shall and may be lawful to and for any two or more such justices, upon any complaint

complaint or application by any apprentice, put out by the parish, or any other apprentice, upon whose binding out no larger a sum than five pounds of lawful *British* money was paid, touching or concerning any misusage, refusal of necessary provision, cruelty, or other ill-treatment of or towards such apprentice, by his or her master or mistress, to summon such master or mistress to appear before such justices at a reasonable time to be named in such summons; and such justices shall and may examine into the matter of such complaint; and upon proof thereof made upon oath, to their satisfaction (whether the master or mistress be present, or not, if service of the summons be also, upon oath, proved) the said justices may discharge such apprentice, by warrant or certificate under their hands and seals; for which warrant or certificate no fees shall be paid.

Justices upon complaint of certain apprentices, to summon the master, &c.  
and, upon satisfactory proof, to discharge the apprentice.

*Seet. 4.* “ And be it further enacted by the authority aforesaid, that it shall and may be lawful to and for such justices, upon application or complaint made upon oath, by any master or mistress, against any such apprentice, touching or concerning any misdemeanor, miscarriage or ill-behaviour, in such his or her service (which oath such justices are hereby impowered to administer) to hear, examine, and determine the same, and to punish the offender by commitment to the house of correction, there to remain and be corrected, and held to hard labour for a reasonable time, not exceeding one calendar month, or otherwise by discharging such apprentice, in manner and form before mentioned.”

Justices upon complaint of masters against apprentices, and proof upon oath, to punish the offender by commitment, &c.

*Seet. 5.* “ Provided nevertheless, that if any person or persons shall think himself, herself, or themselves aggrieved by such determination, order, or warrant of such justice or justices as aforesaid (save and except any order of commitment) he, she, or they may appeal to the next general quarter sessions of the peace to be held for the county, riding, liberty, city, town corporate, or place where such determination or order shall be made; which said next general quarter sessions is hereby impowered to hear and finally determine the same, and to give and award such costs to any of the respective persons, appellant or respondent, as the said sessions shall judge reasonable, not exceeding forty shillings; the same to be levied by distress and sale, in manner before mentioned.”

Persons aggrieved may appeal.  
Exception.  
Costs not to exceed 40 s.

*Seet. 6.* “ Provided also, and be it further enacted by the authority aforesaid, that no writ of *certiorari*, or other process, shall issue or be issuable to remove any proceedings whatsoever, had in pursuance of this act, into any of his majesty's courts of record at *Westminster*.

No writ of *certiorari*.

**Stat.** 20 Geo. 2. cap. 45. [*A. D.* 1747.] *seet. 4.* recites the act 8 Ann. c. 9. 20 Geo. 2. 9 Ann. c. 21. and 18 Geo. 2. c. 22. and gives further time for payment of duties omitted to be paid for the indentures of clerks and apprentices, upon payment of double duties, &c.

*Seet. 5.* “ And it is hereby further enacted, that from and after the twenty-fourth day of June one thousand seven hundred and forty-seven, if any master or mistress, who, by reason of such neglect as aforesaid, shall become liable to forfeit and pay the said double rates and duties as aforesaid,

Upon payment of double duties and tender of the contracts to be paid,

stamped within 2 years after the end of the apprenticeship, &c. said, shall respectively pay the said double rates and duties unto the person or persons to whom the same ought to be paid in pursuance of the said former acts, and also tender the indentures or contracts to be stamped at any time within two years after the end or determination of the apprenticeship or service of any such clerk, apprentice, or servant respectively, and before any suit or prosecution shall have been commenced for recovering any of the penalties and forfeitures inflicted and incurred by the said former acts, or any of them; then, and in such case, the indentures or contracts of such clerk, apprentice, or servant respectively shall be good and available in law and equity, and may be given in evidence in any court whatsoever; and the clerks, apprentices, or servants therein named, shall be capable of following and exercising their respective intended trades or employments, as fully as if the rates and duties so omitted, had been duly paid within the respective times in the said former acts, or any of them, limited or appointed; and all and every person and persons, who shall have incurred any penalties by the omissions aforesaid, upon payment of such double rates and duties as aforesaid, within the respective times herein last before limited in that behalf, shall be, and they are hereby acquitted and discharged of and from the said penalties and forfeitures; any thing in the said former acts, or any of them, contained to the contrary notwithstanding."

the contracts to be good, &c. *Sett.* 6. "And it is hereby further enacted, that if any master or mistress shall, by reason of any such neglect as aforesaid, become liable to forfeit and pay such double rates and duties as aforesaid, and any such clerk, apprentice, or servant respectively, shall and do, at any time after such forfeiture incurred, either in the presence of one or more credible witnesses or wineffes, or by writing under the hand of such clerk, apprentice, or servant respectively, signed in the presence of one or more credible witnesses or witneffes, require his or her master or mistress respectively to pay the said double rates or duties so incurred as aforesaid, and such master or mistress shall not, within three months after such request, pay the same, and any such clerk, apprentice, or servant shall, at any time within two years after the determination of his clerkship, apprenticeship, or servitude, pay the said double rates and duties so forfeited and incurred, and not paid by his or her master or mistress respectively as aforesaid; then, and in such case, it shall and may be lawful to and for any such clerk, apprentice, or servant, within three months after such payment of the said double rates and duties by him, her, or them, as aforesaid, to demand of his or her master or mistress, or his, her, or their executors or administrators, double the sum or sums of money, or other consideration respectively given, paid, and agreed, or contracted to be paid to such master or mistress, for or in respect of such clerkship, apprenticeship, or servitude; and in case such sum or sums of money shall not be paid within three months after such demand thereof made, it shall and may be lawful to and for any such clerk, apprentice, or servant, to sue for and recover the same, with full costs of suit, against such master or mistress, his, her, or their executors or administrators, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, wherein no essoin, protection, or wager of law, or more than one imparlance, shall

Penalties incurred for omissions discharged upon payment of double duties.

Apprentices, &c. paying the double duties forfeited by their masters, &c.

to be reimbursed double the sum paid in respect of such apprenticeship, &c.

with costs;

shall be allowed; and every such clerk, apprentice, or servant, so paying such double rates or duties as aforesaid, shall and may, immediately after payment thereof respectively, and upon signifying, by writing under his or her hand, that he or she desires to be discharged from his, her, or their clerkship, apprenticeship, and service respectively, shall be accordingly discharged from the same respectively, and from all actions, penalties, forfeitures, and damages, for not serving the time for which he, she, or they were respectively bound, contracted for, or agreed to serve such master or mistress respectively.

*Sett.* 7. "Provided always, and it is hereby further enacted and declared, that every such clerk, apprentice, or servant, shall avail him or herself, and have such and the same benefit and advantage of the time he or she shall respectively have continued with and served such master or mistress respectively, as he or she could or might have done, in case of any assignment or turning over to any new or other master or mistress."

*Sett.* 8. "Provided always, that in case where any prosecution shall be commenced against any master or mistress, for recovering any of the penalties and forfeitures inflicted and incurred by the said former acts, or any of them, the clerk, apprentice, or servant of such master or mistress respectively, shall pay such double rates and duties, at any time within two years after the end of his, her, or their clerkship, apprenticeship, or servitude, and every such clerk, apprentice, or servant respectively, shall, upon payment of such double rates and duties as aforesaid, be capable and qualified to follow and exercise his, her, and their respective trades and employments; and the indentures or contracts of such clerk, apprentice, and servant respectively, shall be good and available in law and equity, and may be given in evidence in any court whatsoever; any thing in this or the said former acts, or any of them, contained to the contrary notwithstanding."

**Stat.** 5 *Geo.* 3. c. 46. [*A. D.* 1765. Intituled] "An act for altering the stamp duties upon admissions into corporations or companies; and for further securing and improving the stamp duties in *Great Britain*."

*Sett.* 18. "And whereas by an act of parliament made in the ninth year of the reign of her late majesty *Queen Anne*, intituled, *An act for the laying certain duties upon candles; and certain rates upon monies to be given with clerks and apprentices, towards raising her majesty's supply for the year one thousand seven hundred and ten*, the duty, rate or sum of sixpence, for every twenty shillings of every sum of fifty pounds or under; and the duty, rate or sum of one shilling for every twenty shillings of all and every sum and sums amounting to more than fifty pounds, which should be given, paid, contracted, or agreed for, with, or in relation to, every clerk, apprentice, or servant, which should be, within the kingdom of *Great Britain*, put or placed to or with any master or mistress, to learn any profession, trade, or employment, and proportionably for greater or lesser sums, was charged

and be discharged from their apprenticeship, if they require it;

and to have the same benefit of their service, as if they had been turned over.

Apprentices paying the double rates where prosecutions are commenced against their masters,

to be qualified to follow their trades, &c.

5 *Geo.* 3. c. 46.

Clause in act 9 *Ann.*

Where the freedom of any city or company is obtained by servitude, the chamberlain, or other proper officer, is to enter the names of all persons put out clerks, apprentices, or servants, with the names and abode of the masters, the apprentice fees, and dates of the indentures, &c. on forfeiture of 20 l. and the following notice

and imposed on the said masters or mistresses respectively: and whereas great inconveniencies arise in collecting the said duties, for want of proper entries being made and kept by the chamberlain and other proper officers of cities and corporate towns, and companies, of the names of the master or mistress, and clerk, apprentice, or servant; the place of abode of such master or mistress; the date of the indenture, covenant, articles, or contract, the sum of money given, paid, contracted, or agreed for, and the profession, trade, or employment, which such clerk, apprentice or servant, is to learn: for remedying whereof, be it further enacted and declared by the authority aforesaid, that from and after the said fifth day of *July* one thousand seven hundred and sixty-five, every chamberlain and other proper officer of every city and corporate town, and company, within the kingdom of *Great Britain*, where any clerk or apprentice, or servant, obtains his freedom by servitude, shall fairly write and enter in some book or books to be kept for that purpose, the names of all such clerks, apprentices, and servants, as shall be put or placed out within the jurisdiction of such city or town corporate, and also the names and places of abode of the masters or mistresses, and the sums of money given, paid, contracted, or agreed for, with, or in relation to, such clerks, apprentices, or servants, and the profession, trade, or employment, which they are respectively to learn; and the dates of the indentures, covenants, articles, or contracts, by which such clerks, apprentices, or servants, are respectively put and placed out; and if any chamberlain or other proper officer shall neglect or refuse to make any such entry, in manner as above set forth, he shall, for every such offence, forfeit the sum of twenty pounds.

*Sett.* 19. "And be it further declared and enacted by the authority aforesaid, that all printed indentures, covenants, articles, or contracts, for binding clerks or apprentices in *Great Britain*, after the fifth day of *July* one thousand seven hundred and sixty-five, shall have the following notice, or memorandum, printed under the same; *videlicet*,

The notice.

**T**HE indenture, covenant, article, or contract, must bear date the day it is executed; and what money or other thing is given or contracted for with the clerk or apprentice, must be inserted in words at length; and the duty paid to the stamp office, if in London, or within the weekly bills of mortality, within one month after the execution, and if in the country, and out of the said bills of mortality, within two months, to a distributor of the stamps, or his substitute; otherwise the indenture will be void, the master or mistress forfeit fifty pounds, and another penalty, and the apprentice be disabled to follow his trade or be made free.

on forfeiture of 10 l.

And if any printer, stationer or other person or persons, shall sell, or cause to be sold, any such indenture, covenant, article, or contract, without such notice or memorandum being printed under the same; then, and in every such case, such printer, stationer, or other person or persons, shall, for every such offence, forfeit the sum of ten pounds.

Stat.

**Stat. 6 Geo. 3. c. 25.** [*A. D. 1765. intituled,*] “ An act for better 6 Geo. 3.  
regulating apprentices, and persons working under contract.” c. 25.

“ Whereas persons employed in several manufactories of this kingdom frequently take apprentices who are very young, and, for several years of their apprenticeships, are rather a burthen than otherwise to their masters: And whereas it frequently happens that such apprentices, when they might be expected to be useful to their masters, absent themselves from their service: And whereas the laws in being are not sufficient to prevent these inconveniencies: For remedy whereof, may it please your majesty, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the twenty-fourth day of *June* one thousand seven hundred and sixty-six, if any apprentice shall absent himself from his master's service before the term of his apprenticeship shall be expired, every such apprentice shall, at any time or times thereafter, whenever he shall be found, be compelled to serve his said master for so long a time as he shall have so absented himself from such service, unless he shall make satisfaction to his master for the loss he shall have sustained by his absence from his service; and so, from time to time, as often as any such apprentice shall, without leave of his master, absent himself from his service before the term of his contract shall be fulfilled: And in case any such apprentice shall refuse to serve as hereby required, or to make such satisfaction to his master, such master may complain, upon oath, to any justice of the peace of the county or place where he shall reside, which oath such justice is hereby empowered to administer, and to issue a warrant under his hand and seal, for apprehending any such apprentice; and such justice, upon hearing the complaint, may determine what satisfaction shall be made to such master by such apprentice; and in case such apprentice shall not give security to make such satisfaction according to such determination, it shall and may be lawful for such justice to commit every such apprentice to the house of correction for any time not exceeding three months.

*Sett.* 2. “ Provided always, that nothing in this act contained shall extend to any apprentice, whose master shall have received with such apprentice the sum of ten pounds. except as to apprentices paying 10 l. Fee;

*Sett.* 3. “ Provided also, that no apprentice shall be compelled to serve for any time or term, or to make any satisfaction to any master, after the expiration of seven years next after the end of the term for which such apprentice shall have contracted to serve; any thing herein contained to the contrary notwithstanding. or where 7 years shall have elapsed.

*Sett.* 4. “ And whereas it frequently happens that artificers, callico printers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, labourers, and others, who contract with persons for certain terms, do leave their respective services before the times of their contracts are fulfilled; to the great disappointment and loss of the persons with whom they so contract: For remedy whereof, be it further enacted by the authority aforesaid, that from and after the said twenty-fourth day of *June* Justices im-  
powered to  
oblige ap-  
prentice ab-  
senting before  
expiration of  
his appren-  
ticeship, to  
serve for such  
term as he  
shall absent,  
or to make  
satisfaction:



## Apprentices.

against artificers and others not fulfilling their contract, or being guilty of any misdemeanor,

*fine* one thousand seven hundred and sixty-six, if any artificer, callico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall contract with any person whomsoever for any time or term whatsoever, and shall absent himself from his service before the term of his contract shall be compleated, or be guilty of any other misdemeanor, that then, and in every such case, it shall and may be lawful for any justice of the peace of the county or place where any such artificer, callico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer or other person, shall be found, and such justice is hereby authorized and impowered, upon complaint thereof made upon oath to him by the person with whom such artificer, callico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall have so contracted, or by his or her steward or agent, which oath such justice is hereby impowered to administer, to issue his warrant for the apprehending every such artificer, callico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, and to examine into the nature of the complaint; and if it shall appear to such justice that any such artificer, callico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall not have fulfilled such contract, or hath been guilty of any misdemeanor, it shall and may be lawful for such justice to commit every such person to the house of correction for the county or place where such justices shall reside, for any time not exceeding three months, nor less than one month.

and upon conviction to commit the offender.

Persons aggrieved by the order of a justice (except in cases of commitment) may appeal; giving notice to the justice, and entering into recognizance, &c.

Justices at the quarter sessions impowered to determine the appeal, and award costs.

Limitation of this act with respect to the stannaries, and city of London.

*Sec. 5.* " Provided always, that if any person shall think himself aggrieved by such determination, order, or warrant, of any justice of the peace as aforesaid, except an order of commitment, every such person may appeal to the next general quarter sessions of the peace to be held for the county or place where such determination or order shall be made; such person giving six days notice of his intention of bringing such appeal, and of the cause and matter thereof, to such justice of the peace and the parties concerned; and entering into a recognizance within three days after such notice, before some justice of the peace for such county or place, with sufficient surety, conditioned to try such appeal at, and abide the order or judgment of, and pay such costs as shall be awarded by, the justices at such quarter sessions; which said justices, at their said sessions, upon due proof of such notice being given, and of entering into such recognizance as aforesaid, shall and are hereby directed to proceed in, hear, and determine, the causes and matters of all such appeals; and shall give such relief and costs to the parties appealing or appealed against, as they, in their discretion, shall judge proper and reasonable; and their judgments and orders therein shall be final and conclusive to all parties concerned.

*Sec. 6.* " Provided also, that nothing in this act contained shall extend to the stannaries in the counties of *Devon* and *Cornwall*, or to impeach or lessen the jurisdiction of the chamberlain of the city of *London*, or of any other court within the said city, touching apprentices.

Stat.

## Apprentices.

III

**Stat. 7 Geo. 3. c. 21.** [*A. D. 1766. intituled,*] “An act to obviate 7 Geo. 3.  
inconveniencies which may arise with respect to the execution of several c. 21.  
acts of parliament in such cities, boroughs, towns corporate, franchises,  
and liberties, as have only one justice of the peace of the *quorum* qua-  
lified to act within the same.”

“Whereas authority is given by divers acts of parliament to two or Preamble.  
more justices of the peace, whereof one or more are to be of the *quorum*:  
And whereas many inconveniencies have arisen in such cities, boroughs,  
towns corporate, franchises, and liberties, as have only one justice of the  
peace of the *quorum* qualified to act within the same: Be it enacted by the  
king’s most excellent majesty, by and with the advice and consent of the  
lords spiritual and temporal, and commons, in this present parliament  
assembled, and by the authority of the same, that from and after the pas-  
sing of this present act, all acts, orders, adjudications, warrants, inden- Two or more  
tures of apprenticeship, or other instruments, which shall be made, done, justices, tho’  
or executed, by virtue of any act or acts of parliament made or to be not of the  
made, by two or more justices of the peace qualified to act within such *quorum*, im-  
cities, boroughs, towns corporate, franchises, and liberties, though nei- powered to  
ther of the said justices are of the *quorum*, shall be valid and effectual in carry certain  
law, to all intents and purposes, as if one of the said justices had been of acts into exe-  
the *quorum*; any law, statute, or usage, to the contrary notwithstanding.” cution.

**Stat. 7 Geo. 3. c. 39.** [*A. D. 1766. intituled,*] “An act for the bet- 7 Geo. 3:  
ter regulation of the parish poor children, of the several parishes therein c. 39.  
mentioned, within the bills of mortality.”

“Whereas it would greatly tend to the preservation of the lives of the Preamble.  
infant parish poor of the several parishes hereafter mentioned, and be of  
publick utility, if the officers of such parishes were compelled by law to  
send such infant poor into the country, to be nursed, for a certain time;  
and proper persons appointed guardians in each parish, to inspect into  
the management and usage of such infants: And whereas the keeping  
• registers of such infant poor, until they shall respectively arrive at the age  
of fourteen years, be placed out apprentice, or otherwise disposed of,  
would be a further means of preserving the lives of such infants: May it  
therefore please your majesty, that it may be enacted; and be it enacted  
by the king’s most excellent majesty, by and with the advice and consent  
of the lords spiritual and temporal, and commons, in this present parlia-  
ment assembled, and by the authority of the same, that all and every child-  
and children, who, on or before the first day of *July* one thousand seven  
hundred and sixty-seven, was or were born in, or received into, any work- Children born  
house or parish-house; or which shall thereafter be born in any workhouse in, or recei-  
or parish-house, or received by any select vestries, governors, directors, or ved into, any  
managers, appointed for the management of parochial affairs, or by any workhouse  
church-wardens, overseers of the poor, or other officer or officers autho- or parish-  
rized by the several parishes following, or any of them, respectively; house, within  
that is to say, the seventeen parishes without the walls of *London*; the the several  
parishes here  
mentioned,  
twenty-

are to be nursed, and taken care of, as follows; viz. Such of them as are under six years of age, to be sent into the country, not less than three miles off; those under two years, not suckled by the mother, not less than five miles off;

and those above two, and under six years of age, not less than three miles off.

Weekly rates to be paid for their nursing and maintaining, till apprenticed, or returned to the workhouse. Conditional reward to nurse for their care.

Cloathing to be furnished, and all other incidental expences defrayed, by the parish, and separate accounts to be kept thereof.

twenty-three parishes in *Middlesex* and *Surrey*, being within the bills of mortality, and the liberty of the tower of *London*; and the ten parishes within the city and liberty of *Westminster*; shall be nursed and taken care of in manner as hereafter mentioned.

*Secl. 2.* “ And be it further enacted by the authority aforesaid, that all such children under the age of six years, who, upon the said first day of *July*, shall be under the care of vestries, governors, directors, or managers of the poor, or parish officers, shall, within fourteen days after the said time, be sent into the country, to a distance not less than three miles from any part of the cities of *London* and *Westminster*; there to be nursed and maintained at the charge of their respective parishes.

*Secl. 3.* “ And be it further enacted by the authority aforesaid, that all children who shall, from and after the said first day of *July*, be born in, or shall be received into, workhouses or parish-houses belonging to the said parishes, not being suckled by the mother, under the age of two years, shall, within fourteen days after their birth or reception, be sent into the country, to a distance not less than five miles from any part of the said cities of *London* or *Westminster*; and all children received into such workhouses or parish-houses above the age of two years, and under the age of six years, shall, within fourteen days after their reception, be sent into the country, to a distance not less than three miles from any part of the said cities of *London* or *Westminster*; there to be nursed and maintained in manner herein after directed.

*Secl. 4.* “ And be it further enacted by the authority aforesaid, that for the nursing and maintenance of each child so put out as aforesaid, the respective sums following shall be paid; that is to say, for the first six years of their age, a sum not less than two shillings and six pence; and from that time until such child shall be put out apprentice, or return to the workhouse, a sum not less than two shillings *per week*; and shall also, over and above the said charge of nursing and maintaining each child, pay to every nurse who shall have received any child of or under the age of nine months (the said child being alive, and having been treated properly, and to the satisfaction of the guardians hereafter mentioned, or the major part of them, assembled at any meeting appointed by this act) after having been under her care twelve months, a sum not less than ten shillings, as a reward for her pains and care taken in the nursing of such child: And the governors, directors, managers, or overseers of the poor, of the respective parishes from whence such children shall be so sent to nurse, shall find good, proper, and sufficient cloathing for each and every of them respectively; and shall defray the expences of conveyance, medicines, burials, and all other necessary expences incurred on account of said children; and shall keep, in a book or books to be provided for that purpose, separate, regular, and exact accounts of all expences incurred in relation thereto.

*Secl. 5.* “ And, in order the more effectually to guard against all dangerous consequences which may arise to the said children from false parishmony, negligence, inadvertency, or the annual change of parish officers, Be

Be it further enacted by the authority aforefaid, that five noblemen or gentlemen, inhabitants of each parifh, fhall, within fourteen days after the faid firft day of *July*, be appointed and chofen, under the title or denomination of *Guardians of the parifh poor children*; two or more of which faid guardians fhall be chofen out of the felect veftry, or out of the governors, directors, or managers of the poor of each parifh; and where there is no felect veftry, governors, directors, or managers; then the faid five guardians to be chofen and appointed out of the noblemen and gentlemen inhabitants of each parifh; and the election to be made upon *Tuefday*, or fome other day in *Eafter* week, by the inhabitants having right to afemble in veftry: And in cafe there fhall be no noblemen or gentlemen, or not be a fufficient number of fuch noblemen or gentlemen who will accept of the office of guardians; then the faid guardians, or fo many as fhall be wanting to make up the number of five, fhall be chofen out of the principal and moft refpectable inhabitants: And if any of the parties fo chofen fhall refufe to act, or fhall afterwards resign their guardianship, or fhall die; that then, and in either of the faid cafes, a further choice fhall be made in the fame manner as before mentioned, within fourteen days after fuch refufal, refignation, or death, of fo many as fhall be neceffary to complete the number.

Five guardians of the parifh poor children to be chofen.

Where any fhall refufe to act or fhall resign, or die, a further choice to be made.

*Seft. 6.* “ And be it further enacted by the authority aforefaid, that fuch noblemen, gentlemen, or principal inhabitants, who fhall, in confequence of this act, be firft chofen and appointed guardians of the parifh poor children, fhall continue and remain in their refpective offices till the day in *Eafter* week, in the year one thoufand feven hundred and feventy, of the inhabitants meeting for the choice of guardians as aforefaid; and that the guardians then chofen, or at any time thereafter to be chofen, fhall remain in their refpective offices for the term of three years then next enfuing: And that all appointments of guardians in future, fhall be once in three years only; except in cafes of death, refignation, or refufal as aforefaid.

First guardians to continue in office till the year 1770;

Future guardians to remain three years in office.

*Seft. 7.* “ Provided always, that no churchwarden, or overfeer of the poor, fhall be elected into the faid office of a guardian.

Churchwardens and overfeers difqualified from being elected guardians.

*Seft. 8.* “ And be it further enacted by the authority aforefaid, that the faid guardians or any one of them, fhall have free admittance to vifit and fee the faid parifh poor children, and inform themfelves fully concerning their ftate and condition; and the faid guardians fhall alfo have full liberty to examine, and have free accefs to, all registers, books, and accounts, relating to the faid children: And in cafe of any neglect or improper conduct, whereby the life or health of a child may appear to the faid guardians, or to any one of them, to be in danger, to report the fame to the felect veftry, governors, directors, or managers, or to the churchwardens or overfeers of the poor: And if the faid veftry, governors, directors, or managers, churchwardens, or overfeers, or fome or one of them, do not take the moft efficacious meafures to remedy the evil complained of by them, how to be remedied.

Power and duty of guardians.

Evil complained of by them, how to be remedied.

plained of; that then it shall be lawful to and for the said guardians, or any of them, to inform one or more of his majesty's justices of the peace, and give evidence of the facts; and the said justice or justices of the peace is and are hereby impowered to give such orders and directions therein, as he or they shall think most proper.

A meeting of the guardians to be summoned every six weeks; Two make a quorum. Power given them singly, or jointly, to call in the churchwardens or overseers.

*Señ. 9.* " And be it further enacted, that the said guardians shall be summoned, by the vestry clerk, at least once in six weeks, to meet at the vestry-room, or, where there is no vestry-room, in other convenient place; and two of the said guardians shall make a *quorum*, either of them having the liberty of calling in one of the churchwardens or overseers; and when only one of the said guardians is present, he shall have the liberty of calling in two of the churchwardens or overseers, who shall attend him accordingly; and when any number of the said five guardians shall meet, they shall have the liberty of calling in two of the churchwardens or overseers, as the majority of them shall think proper.

Liberty granted, of sending parish poor children, under six years of age, to the Foundling hospital, upon such terms as shall be agreed on:

*Señ. 10.* " And whereas in many parishes the said select vestries, governors, directors, or managers, churchwardens, or overseers of the poor, may find it inconvenient and difficult, through want of regular correspondence with proper persons in the country, to supply them with nurses, and also to take the charge of inspecting nurseries in such a manner as shall prove effectual to the preservation of the lives of the said children; Be it therefore enacted by the authority aforesaid, that the said select vestries, governors, directors, or managers, churchwardens, or overseers of the poor, shall be at liberty to send their said parish poor children, or any of them, being under the age of six years as aforesaid, to the hospital for the maintenance and education of exposed and deserted young children; and it shall and may be lawful to and for the governors and guardians of the said hospital for the time being, to receive such children: And the said select vestries, governors, directors, managers, churchwardens, or overseers of the poor, are hereby impowered to agree with the said governors and guardians for that purpose, upon such terms, and in such manner, as shall be adequate to the support and maintenance of each child.

The charge to be defrayed out of the poor rates; and if not duly paid,

*Señ. 11.* " And be it enacted by the authority aforesaid, that the terms so agreed upon, and the sums agreed to be paid for the admission, maintenance, and education, of such parish poor children as shall be sent to the said hospital, shall be paid by the overseer or overseers of the poor for the time being, out of the poor rate of each parish respectively: And in case any sum or sums of money agreed between the said select vestries, governors, directors, or managers, churchwardens, or overseers, and the governors and guardians of the said hospital, or any five of them in committee, shall not be paid, by such overseer or overseers, to the person or persons who shall be authorized by the said governors and guardians to receive the same; it shall and may be lawful to and for any one or more of his majesty's justices of the peace for the counties of *Middlesex* or *Surrey*, the city and liberty of *Westminster*, or liberties of the *Tower Hamlets*, respectively, to summon the overseer or overseers who shall refuse or neglect to make such payment, and to order immediate payment to be made

any justice may summon the overseers, and order im-

of so much as shall appear to such justice or justices to be due, together with such costs and charges as may have been incurred by the said governors and guardians in consequence of such refusal or neglect: And if the overseer or overseers shall refuse or neglect to obey the order of such justice or justices, the sum directed to be paid thereby shall be recovered by distress and sale of the goods and chattels of such overseer or overseers, together with the costs attending such distress and sale, rendering the overplus (if any) to the owner.

*Sett. 12.* "And be it further enacted by the authority aforesaid, that at the time of the death, discharge, or apprenticeship, of any such parish poor child, a certificate thereof shall be sent, by the secretary of the said governors and guardians, to the vestry clerk, or overseers of the poor, of such parish to which the said child did belong.

*Sett. 13.* "And be it further enacted by the authority aforesaid, that the hospital account shall be kept with each parish distinct, in a proper book or books, with marginal columns, according to the schedule annexed, marked (A); and that such book or books, or true copies thereof, shall be signed by the secretary of the hospital.

*Sett. 14.* "And whereas it often disturbs the peace of domestic life, checks marriage, and discourages industry, to place out parish boys to the age of twenty-four years; therefore, in order to remedy the same, Be it enacted by the authority aforesaid, that it shall and may be lawful to place or bind out boys as well as girls apprentices, by the respective parish officers for time being, and also by the governors and guardians of the hospital for the maintenance and education of exposed and deserted young children, for the term of seven years, or till they shall attain their respective ages of twenty-one years, and no longer.

*Sett. 15.* "And whereas the sums of twenty shillings to forty shillings, now usually given with a child placed out by the parishes, are by no means adequate to the procuring such masters and mistresses as are in general fit and proper: And whereas there is a general neglect in the moral and religious instruction of apprentices; and some pecuniary encouragement may excite masters and mistresses to discharge their duty, in this respect, towards young persons who are thus intrusted to their care; Be it therefore further enacted by the authority aforesaid, that from and after the said first day of *July* one thousand seven hundred and sixty-seven, no such parish child shall be bound out an apprentice with a sum less than four pounds two shillings as an apprentice fee; forty shillings whereof to be paid to the master or mistress within seven weeks after executing the indentures, and the remaining forty-two shillings to be paid after such apprentice shall have served three years of his or her apprenticeship.

*Sett. 16.* And whereas the act of the second of his present majesty, Act 2 Geo. 3. intituled, "An act for the keeping regular, uniform, and annual registers, of all parish poor infants under a certain age within the bills of mortality," requires no account of the children after the age of four years; Be it therefore further enacted by the authority aforesaid, that the respective vestries, governors, directors, managers, overseers of the poor, or other officer

Particular Registers to be provided by each parish, according as they come within the following description.

officer or officers, of the several and respective parishes herein before mentioned, or some or one of them, shall, and they are hereby directed and required, on or before the said first day of *July*, to provide, or cause to be provided, at the expence of their respective parishes wherein there is or shall be a work-house, hospital, or other house or place provided for the maintenance of the poor, a book of royal paper which shall be ruled with distinct columns, and the title of each column shall be wrote or printed in such page agreeable to the schedule hereunto annexed, marked (B); and the book belonging to each respective parish, wherein there is not nor shall be any such workhouse, hospital-house, or place, shall in every page be ruled with distinct columns, and the title of each column shall be wrote or printed in such page agreeable to the schedule hereunto annexed, marked (C); any thing in the said act of the second year of his present majesty's reign, or any other act or acts of parliament, to the contrary thereof in any wise notwithstanding."

Entry to be made at the foot of each register.

*Sett.* 17. "And be it further enacted by the authority aforesaid, that there shall be mentioned, at the foot of each register, the gross number of the children, remaining in the hands of mothers who have been relieved by the respective parishes during the course of the year, not entered in the register; and the number of such who are known to be remaining alive."

Form of the abstract of the register of the infant poor. Manner of conducting their registers.

*Sett.* 18. "And be it further enacted by the authority aforesaid, that the abstract of the register of the said infant poor shall be according to the schedule hereunto annexed, marked (D)."

*Sett.* 19. "And be it further enacted by the authority aforesaid, that the names of all the parish poor children who shall be alive, under the care of any governors, directors, managers, churchwardens, or overseers of the poor, on the first day of *July* next ensuing, shall be entered in the said registers, and shall be continued on and transferred from year to year, in the said register, until their death, or discharge to parents or friends, or until they are respectively placed out apprentice; and that the day of placing them out, and the time of their servitude, shall be entered in the said registers as above mentioned.

Annual List to be made out by each parish of the children apprenticed, and delivered to the company of parish clerks. Abstract thereof to be printed, and delivered to each parish. Registers and lists to commence and end annually at a certain time.

*Sett.* 20. "And be it further enacted by the authority aforesaid, that a full list of all apprentices placed out by the respective parishes shall be made out by the vestry clerks, or other proper officer, and delivered, in the month of *February* in every year, to the company of parish clerks; the same to be written on royal paper according to the schedule annexed, marked (E), to be bound up and deposited by the company of parish clerks; and the said company shall make out an abstract thereof, distinguishing the number placed out from each parish, and how many of them were born in the work-house or parish-house; and shall cause the same to be printed, and shall send six fair copies of the said abstract to each parish respectively."

*Sett.* 21. "And be it further enacted by authority aforesaid, that the first annual register of the said infant poor, and also the first annual lists of apprentices, hereby intended and directed to be kept, shall commence on the said first day of *July*, and shall end on the thirty-first day of *December* ensuing;

fuings; and after that time the said annual register and lists shall commence the first day of *January*, and end the thirty-first day of *December* following."

*Seet. 22.* "And be it further enacted by the authority aforesaid, that all expences incident to and attending the nursing, maintenance, education, placing out apprentice, or otherwise relating to the matters herein contained, the manner whereof is not herein particularly ordered and directed, shall be paid out of the monies arising from the poors rates of the respective parishes wherein such expences shall be incurred." General expences not otherwise provided for, to be paid out of the Poors Rates.

*Seet. 23.* "And be it further enacted by the authority aforesaid, that if any churchwarden, overseer of the poor, vestryman, clerk of the vestry, master of the workhouse, master or warden of such company of parish clerks, or any clerk of such company, or any other person or persons, shall neglect his duty as directed in and by this act; such churchwarden, overseer of the poor, clerk of the vestry, or master of the workhouse, master or warden of such company of parish clerks, or such clerk of such company, person or persons, shall, for every offence, forfeit and pay to the informer the sum of five pounds; to be recovered before any two or more of his majesty's justices of the peace, and to be levied by distress and sale of the goods and chattels of the offender, by virtue of a warrant under the hands and seals of the justices before whom the same shall be recovered, directed to any constable or other peace officer; and if there shall be any overplus of the said forfeiture, the same shall be returned to the owner, after the charges of such distress and sale shall be deducted. Penalty on parish officers, and others, neglecting their duty.

*Seet. 24.* "And be it further enacted by the authority aforesaid, that this act shall be deemed, adjudged, and taken to be, a public act; and be judicially taken notice of as such, by all judges, justices, and other persons whatsoever, without specially pleading the same." Publick act.



Account of the Hofpital for the Maintenance and Education of Exposed and Deferred young Children, with the Parish of (according to an Act of Parliament of the Seventh of His Majesty King George the Third) of the Infant Parish Poor received by the said Hofpital.

[illegible]

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# SCHEDULE B.

ANNUAL REGISTER of the PARISH POOR CHILDREN, until they are Apprenticed out from the  
Day of \_\_\_\_\_ to the 31st Day of *December* \_\_\_\_\_ of the Parish of \_\_\_\_\_ (where there is  
a Workhouse or Parish House) according to the Acts of Parliament of the Second and Seventh of His Majesty King  
*George the Third.*

## Apprentices.

Name of the Child. If a Foundling } F. Age real or mark — — — B. reputed at If a Bastard — — — C. the Time If a Casualty — — — D. when re- taken in a Second ceived. Time, mark the Se- cond Entry of the Months — Y. Name — — — 2 Days — D. If a Third Time — 3	If born in the Workhouse, when admitted.	If Money received with any Child, what Sum (such Sum not to be transferred from Year to Year)	When died in the Workhouse.	When sent from the Workhouse, and by whom nursed till sent, if both i. p.	What Work Children past 6 Years of Age are im- ployed in. If can read, or her Prayers — — — p.	When sent to the Hof- pital for Exposed and Deferred young Children.	If discharged from the Parish, to whom deli- vered, and where liv- ing. If re- moved or passed, to what Place.	Nurse's Name, to whom delivered to be nursed. If a Wet Nurse } W. mark — — — } If a Dry Nurse D. } If a Nurse dies or is changed, write the Name of the new Nurse under the former. If nursed by the } M. Mother, mark }	Place where the Nurse lives, in or near what Sign, so as to be found.	Price of nursing each Week.	£. s. d.	If died at Nurse, when.	If past 6 Years of Age and brought to the Workhouse, mark — — — W. If discharged, men- tion to whom, and where living; if apprenticed, men- tion Folio of the Register of Ap- prentices.	
		£. s. d.												

## SCHEDULE C.

ANNUAL REGISTER OF THE PARISH POOR CHILDREN, until Apprenticed out, from the Day of to the  
 31st Day of December of the Parish of (where there is not a Workhouse or Parish House)  
 according to the Acts of Parliament of the Second and Seventh of His Majesty George the Third.

Name of the Child. If a Foundling, mark F. If a Bastard, B. If a Cabot, C. If the same Child is taken in a second time, mark the Second Entry. If a Third time, &c.	When received. B. Age, real or reputed. C. Years, Months, Days. D. If born, B.	If Money be received with any Child, what sum (such Sum to be transferred from year to year.)	Name and Place of Abode of the Person by whom the Child is received on the Parish Account, till sent into the Country.	Where sent. Six Years of Age, and in what Work employed. If can read, &c. If can say his Prayers, &c. If both, r. p.	When sent to the Hospital for Exposed and deserted young Children. If removed or passed, to what Place. If discharged from the Parish, to whom delivered, and where living.	Nurse's Name to whom delivered to be nursed. If a Wet Nurse, mark W. If a Dry Nurse, D. If the Nurse dies, or is changed, write the Name of the new Nurse under Sign, so as to be found. If nursed by the Mother, mark M.	Place where the Nurse lives, in what Street, or near what Sign, so as to be found.	Price of Nursing each week £. s. d.	Reward to Nurses for their Care. £. s. d.	If died when at Nurse. If apprenticed out, or placed out to Service, mention Folio in the Apprentice Register.	If discharged from the Parish, mention to whom, and where living.
	Y. M. D.	£. s. d.									

SCHEDULE D.

An Abstract of the Annual Registers of Parish Poor of the Bills of Mortality, from the Birth until apprenticed out.

Born under the care of the parish, but not in the work-house or parish-house.									
Apprenticed out, or put out to Service.									
Remain alive in the Country.									
Total. Died in the Country.									
Died in the Country under these Ages.		Six Years							
		Two Years.							
		Eighteen Months.							
		Twelve Months.							
		Six Months.							
Of whom were under these Ages.		Six Years.							
		Two Years.							
		Six Months.							
		Sent into the Country to be nursed.							
		N. B. As many as were nursed within Five Miles of London, mark L.							
Removed, passed, and discharged, to their Friends, Fathers, or Mothers; if delivered to the Mother, mark M.									
Remain alive in the Workhouse or Parish-house.									
Of whom died under these Ages, nursed by Mothers and Nurses.		Above Four Years.							
		Four Years.							
		Three Years.							
		Two Years.							
		Eighteen Months.							
		Twelve Months.							
		Nine Months.							
		Six Months.							
Died under the care of Nurses in the Workhouse or Parish-house.		Three Months.							
		Nursed by Nurses in the Workhouse or Parish-house.							
Died under the care of the Mother in the Workhouse or parish-house.									
Nursed by the Mother in the Work-house or Parish-house.									
Money.		Rewards paid to Nurses as an encouragement to take all possible Care of the Children.						L. s. d.	
								L. s. d.	
Sum received with Children.								L. s. d.	
Number with whom Money was received.									
Of whom were		Legitimate.							
		Casualties.							
		Illegitimate.							
		Foundlings.							
Of whom were under these Ages.		Above Four Years							
		Four Years.							
		Three Years.							
		Two Years.							
		Eighteen Months.							
		Twelve Months.							
		Nine Months.							
		Six Months.							
		Three Months.							
Total Received in the born and Workhouse.									
Born in the Workhouse or Parish-house.									
Number transferred from the preceding year.									
The Names of Parishes, and where situated.		N. B. Where there is a Workhouse, it is "							

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## SCHEDULE E.

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# SCHEDULE.

REGISTER of the APPRENTICES placed out by the Parish of \_\_\_\_\_ from the \_\_\_\_\_ of \_\_\_\_\_  
to the 31st Day of *December* \_\_\_\_\_ according to the Acts of Parliament of the Second and  
Seventh of His Majesty King *George* the Third.

Name of the Apprentice.	When born or received. If born in the Workhouse or Parish-house, B.	Age when received, in Years, Months, and Days.	When placed out Apprentice.	Name of the Person to whom placed out.	What Trade or Business.	Where living, Street, Sign, or other Distinction.	Age when placed out, in Years, and Months.	For what Time placed out	Apprentice Fee paid down.	When the additional Fee is paid down.
		Y. M. D.					Y. M.			

## Approver.

**A**N *approver*, (in *Latin*, *probator*,) is one who being indicted of treason or felony, for which he is in prison, confesses the indictment; and being sworn to reveal all the treasons and felonies he knows, enters before a coroner his appeal against all his partners in the crime within the realm. *Hal. P. C.* 192. 3 *Inst.* 129. *S. P. C.* 142.

All persons may be approvers except peers of the realm, persons attainted of treason or felony, or outlawed, infants, women, persons *non compos*, or in holy orders. 3 *Inst.* 129. *Hal. P. C.* 192.

The court is not bound of right to admit any person whatsoever to be an approver, nor will any person be admitted, unless he be actually indicted of treason or felony, and confesses the indictment, neither shall a person indicted of felony continue to be an approver after an appeal exhibited against him for the same felony; neither shall the appellee of an approver be himself an approver; for it would falsify the appeal of the first approver, in supposing that he had omitted some of his partners, but also because it would cause an infinite delay; for the appellee of such an approver might as well become an approver of others, and so on. 3 *Inst.* 139. *S. P. C.* 144. 2 *Hawk. P. C.* 205.

A man can only approve others of the very same crime with that for which he is indicted, and therefore no man can approve another with having been an accessory to himself, because it is an offence of which it is not possible that he himself can be guilty; but in as much as an approver is sworn to reveal all the treasons and felonies he knows, if he accuse persons of crimes different from his own, such accusation seems a reasonable ground to carry on a prosecution against them for such crimes, though it be not of itself sufficient to put them on their trials. 2 *Inst.* 629. *Fitz. Coron.* 127. 2 *Hawk. P. C.* 206.

If it appear either by the confession of the approver, or by the return of the sheriff, or the testimony of persons of credit, that there are no such persons, as some of those appealed, *in rerum natura*, or in the realm, or in the county whereof they are named in the appeal, he shall be hanged, unless the court in mercy spare him. 2 *Hawk. P. C.* 206.

The justices of the *King's Bench*, and justices of gaol-delivery, and justices in *Eyre*, may admit a man to be an approver, because such justices may assign a coroner to take the appeal; but justices of the peace cannot admit a man to be an approver, because they cannot assign a coroner. 3 *Inst.* 130. *H. P. C.* 194.

As soon as a person has confessed the indictment, with an intent to become an approver, he puts it in the discretion of the justices, either to give judgment and award execution against him, or to respite him till he hath convicted his partners; if the justices think fit to admit him to be an approver, they will assign a coroner to receive his appeal, and will take his oath to discover all the treasons and felonies he knows, and will assign him

a certain number of days to make his appeal in, during which he shall be at liberty, and shall have from the king a penny a day; also he must make his appeal before the coroner on each day during the time limited, and must at last repeat it *verbatim* in court; and if the coroner record his failure of making his appeal on any of the days, or the least variation in his repeating it in court, he shall have judgment of death. 3 *Inst.* 129. *H. P. C.* 144. 2 *Inst.* 629. 2 *Hawk. P. C.* 207.

As it is in the discretion of the court whether they will suffer one to be an approver, this method of late hath been seldom practised: and in many cases we have what seems to amount to the same, by statute; whereby pardon is assured to offenders, on discovering and convicting their accomplices. 1 *Burn tit. Approver.*

## Arraignment.

A PRISONER is said to be *arraigned*, when he is indicted and brought forth to his trial. *Arraigned* within the verge upon murder. *Staundf. Pl. Cor. fol.* 150. The manner of this *arraignment* may be read in Sir Thomas Smith *de Rep. lib.* 2. *cap.* 25. The learned *Spelman* is of opinion it should be written *arrame* from *arramare*, and that from the old French *arramir*, i. e. *jurare, promittere, solemniter profiteri*. But this must be a mistake: for in the Register we find no such word as *arramare*; but in all the writs of assize 'tis *arraingavit*: and so it is in the year-books, and in *Fitzb. Nat. Brev.* The true derivation is from the French *arraisoner*, i. e. *ad rationem ponere, viz.* to call a man to answer in form of law; and this comes from the barbarous Lat. *adrationare*, i. e. *placitare*: so that when a criminal is *arraigned*, 'tis *ponere eum ad rationem*. Cowell, edit. 1727.

When an offender comes into court, or is brought in by process, sometimes of *capias*, and sometimes of *habeas corpus* directed to the gaoler of another prison; the first thing that follows thereupon is his arraignment. 2 *Hal. H.* 216. Now arraignment is nothing else but the calling the offender to the bar of the court, to answer the matter charged upon him: and the word in *Latin* is no other than *ad rationem ponere*, and in old French *ad reson*, or abbreviated *a resu*; for as the ancient word *disfrain* or *derayn* imports in *Latin* *disfrationare*, to disprove, or evince the contrary of any thing that is or may be affirmed, so *arraigne* is *ad rationem ponere*, to call to account or answer. 2 *Hale's Hist.* 216. The prisoner on his arraignment, tho' under an indictment of the highest crime, must be brought to the bar without irons and all manner of shackles or bonds, unless there be a danger of escape, and then he may be brought with irons. 2 *H. H.* 219. And there is no necessity that a prisoner at the time of his arraignment, hold up his hand at the bar, or be commanded so to do; for this is only a ceremony

mony for making known the person of the offender to the court; and if he answers that he is the same person, it is all one. 2 *Hawk.* 308.

If in an action of slander for calling one thief, the defendant justifies that he stole goods, and issue is thereon taken; if it be found for the defendant in *B. R.* and for felony in the same county where the court sits, or before justices of assize, &c. he shall be forthwith *arraigned* upon this verdict of twelve men, as on an indictment. 2 *Ha. H. P. C.* 151.

The pleas upon arraignment are either the general issue, Not guilty, plea in abatement, or in bar, and the prisoner may demur to the indictment; also he may confess the fact, but then the court has nothing more to do than to proceed to judgment against him. If he stands mute, and doth not put himself upon trial, he shall suffer the penance of *pain fort & dure* in cases of felony, &c. 3 *Inst.* 217.

## Arrest.

**A**RRREST (*arrestum*, from the *French* word *arrester*, to stop or stay) signifies a restraint of man's person, depriving him of his own will and liberty, and binding him to become obedient to the will of the law: and it may be called the beginning of imprisonment. *Cowell.*

It seems clear, that all persons whatsoever who are present when a felony is committed, or a dangerous wound given, are bound to apprehend the offender, on pain of being fined and imprisoned for their neglect, unless they were under age at the time. 2 *Hawk.* 74. By whom offenders may be arrested or apprehended.

And for this cause, by the common law, if any homicide be committed, or dangerous wound given, whether with or without malice, or even by misadventure or self-defence, in any town or in the lanes or fields thereof, in the day-time, and the offender escape, the town shall be amerced, and if out of a town, the hundred shall be amerced. 2 *Hawk.* 74.

And since the statute of *Winchester*, cap. 5. which ordains that walled towns shall be kept shut from sun-setting to sun-rising, if the fact happen in any such town by night or by day, and the offenders escape, the town shall be amerced. 2 *Hawk.* 74.

And as all private persons are bound to apprehend all those who shall be guilty of any of the crimes above-mentioned in their view, so also are they with the utmost diligence to pursue, and endeavour to take all those who shall be guilty thereof out of their view, upon a hue and cry levied against them. 2 *Hawk.* 75.

Hue and cry is the pursuit of an offender from town to town till he be taken, which all who are present when a felony is committed, or a dangerous wound given, are by the common law, as well as by statute, bound to raise against the offenders who escape, on pain of fine and imprisonment: also it seems certain, that a man may lawfully raise it against one who.



who sets upon him in the highway to rob him. Also it is enacted by the statute of *Winchester*, cap. 4. That hue and cry shall be levied upon any stranger who shall not obey the arrest of the watch in the night-time; and 21 *E.* 1. which was made against trespassers in forests, chases, parks, and warrens, seems to allow the levying thereof upon any such offenders. But if a man take upon him to levy a hue and cry without sufficient cause, he shall be punished as a disturber of the peace. 2 *Hawk.* 75.

In order rightly to raise a hue and cry, you ought to go to the constable of the next town, and declare the fact, and describe the offender, and the way he is gone; whereupon the constable ought immediately, whether it be night or day, to raise his own town, and make a search for the offender; and upon the not finding him, to send the like notice, with the utmost expedition, by horsemen as well as footmen, to the constables of all the neighbouring towns, who ought in like manner to search for the offender, and also to give notice to their neighbouring constables, and they to the next, till the offender be found. 2 *Hawk.* 75.

Also every private person is bound to assist an officer demanding his help for the taking of a felon, or the suppressing an affray, or apprehending the affrayers, &c. 2 *Hawk.* 75.

For what  
causes of su-  
spicion, per-  
sons may be  
arrested.

By the statute 34 *Ed.* 3. c. 1. [*A. D.* 1360.] Justices of the peace are empowered "to take and arrest all those that they may find by indictment, or by suspicion, and to put them in prison; and to take of all them that be not of good fame, where they shall be found, sufficient surety and main-prize of their good behaviour towards the king and his people."—

The causes of suspicion, which are generally agreed to justify the arrest of an innocent person for felony, are, 1st, The common fame of the country: but it seems, that it ought to appear upon evidence, upon an action brought for such an arrest, that such fame had some probable ground. 2dly, The living a vagrant, idle, and disorderly life, without having any visible means to support it. 3dly, The being in company with one known to be an offender, at the time of the offence; or generally at other times keeping company with persons of scandalous reputations. 4thly, Being found in such circumstances as induce a strong presumption of guilt, as coming out of a house wherein murder has been committed, with a bloody knife in one's hand; or being found in possession of any part of goods stolen, without being able to give a probable account of coming honestly by them. 5thly, The behaving one's self in such manner as betrays a consciousness of guilt; as where a man being charged with a treason or felony, says nothing to it, but seems tacitly by his silence to own himself guilty, or where a man accused of any such crime, upon hearing that a warrant is taken out against him, doth abscond. 6thly, The being pursued by an hue and cry. 2 *Haw. P. C.* 76.

By whom the  
person must be  
suspected.

It seems to be agreed, that the law hath so tender a regard to the liberty and reputation of every person, that no causes of suspicion whatsoever, let the number and probability of them be never so great, will justify the arrest of an innocent man, by one who is not himself induced by them to suspect him to be guilty, whether he make such arrest of his own head, or in obedience to

the commands of a private person, or even of a constable. 2 Hawk. P. C. 76.

It is holden in some books, that none of the above-mentioned causes will in any case justify the arresting a man for the suspicion of a crime, where in truth no such crime hath been committed either by him or any other person whatsoever. But howsoever this rule may in general be true, it seems very hardly maintainable in the case of the arrest of an innocent person upon a hue and cry levied against him, in such a place where his character is unknown, and with such other circumstances, that the people of the country have no reason to presume it groundless; for in such cases, it would be a great inconvenience to discourage persons from following a hue and cry, with that vigour and diligence, which the law expects, and the publick good requires, by making them liable to an action if it should in the event prove to have been levied without sufficient cause, which they cannot take time to examine without delaying their pursuit: and since the person injured by such an ill-grounded hue and cry, has a good action against him that raised it, there seems to be no necessity, that he should also have a remedy against another. And this opinion seems to be the more plausible, for that among the books cited to maintain the contrary, that which alone doth directly affirm it, seems to go upon an argument manifestly inconclusive; for it says, that a hue and cry is not a sufficient authority to arrest a man unless a felony be done, because the words of the statute of *Westminster* 1. cap. 9. are, That all men shall be ready upon hue and cry to arrest felons; but where no felony is done, there can be no felon, &c. to which it may be replied, that this argument, if it prove any thing, proves that none but felons can be arrested on a hue and cry, which seems to be manifestly false; for it is agreed by all the books, that if a felony be actually committed, an innocent person on whom an hue and cry for it is levied, may lawfully be arrested: also there seems to be no doubt, but that he who barely attempts to rob a man, or who dangerously wounds him, may safely be pursued and taken by a hue and cry, and yet there is no pretence to call such a person a felon. 2 Hawk. 76, 77.

And if it be granted lawful to arrest a man on a hue and cry where no felony hath been committed; from the like grounds it seems also to follow, that it is lawful to arrest a man on the warrant of a justice of peace, where no felony hath been committed. 2 Hawk. 77.

It seems to be certain, that whoever would justify the arrest of an innocent person by reason of such suspicion, must not only shew that he suspected the party himself, but must also set forth the cause which induced him to have such a suspicion, that it may appear to the court to have been a sufficient ground for his proceeding: Also it seems certain, that regularly he ought expressly to shew, that the very same crime for which he made the arrest, was actually committed. But if a man has several causes of such suspicion, he is not bound to insist upon some one of them only, but may alledge them all, for that the replication *de son tort demesne*, answers the whole. And where a man arrests another, who is actually guilty of the crime for which he is arrested, it seems, that he needs not in justify-

Whether any such cause of suspicion will justify an arrest, where no treason or felony hath been committed, or dangerous wound given.

In what manner an arrest for such suspicion is to be justified in pleading.

ing

ing it, set forth any special cause of his suspicion, but may say in general, that the party feloniously did such a fact, for which he arrested him, &c. 2 Hawk. P. C. 77.

Arresting of offenders by private persons of their own authority, permitted by law for the prevention of treason or felony, or in respect of inferior offences.

It seems, that any one may lawfully lay hold on another, whom he shall see on the point of committing a treason or felony, or doing any act which would manifestly endanger the life of another, and may detain him so long, till it may reasonably be presumed, that he hath changed his purpose; and upon this ground it seemeth to be the better opinion, that not only a constable, but any private person who shall see another expose an infant in the street, and refuse to take it away, may lawfully apprehend and detain him till he shall consent to take care of it. 2 Hawk. 77.

It seems clear, that regularly no private person can of his own authority arrest another for a bare breach of the peace after it is over; for if an officer cannot justify such an arrest, without a warrant from a magistrate, surely *à fortiori* a private person cannot: yet it is holden by some, that any private person may lawfully arrest a suspicious night-walker, and detain him till he make it appear, that he is a person of good reputation. Also it hath been adjudged, that any one may lawfully apprehend a common notorious cheat, going about the country with false dice, and being actually caught playing with them, in order to have him before a justice of peace; for the publick good requires the utmost discouragement of all such persons, and the retraining of private persons from arresting them without a warrant from a magistrate would often give them an opportunity of escaping: and from the reason of this case it seems to follow, that the arrest of any other offenders by private persons, for offences in like manner scandalous and prejudicial to the publick, may be justified. 2 Hawk. 77, 78.

Of arresting offenders by constables by their own authority.

It seems difficult to find any case, wherein a constable is impowered to arrest a man for a felony committed or attempted, in which a private person might not as well be justified in doing it: but the chief difference between the power and duty of a constable and a private person in respect of such arrests, seems to be this, that the former has the greater authority to demand the assistance of others, and is liable to the severer fine for any neglect of this kind, and has no sure way to discharge himself of the arrest of any person apprehended by him for felony without bringing him before a justice of peace, in order to be examined; whereas a private person having made such an arrest, needs only to deliver his prisoner into the hands of the constable. 2 Hawk. P. C. 81.

But it is said, that a constable hath authority not only to arrest those whom he shall see actually engaged in an affray, but also to detain them till they find sureties of the peace; whereas a private person seems to have no other power in a bare affray, not attended with the danger of life, but only to stay the affrayers till the heat be over, and then deliver them to the constable, and also to stop those whom he shall see coming to join either party: but it is difficult to find any instance wherein a constable hath any greater power than a private person over a breach of the peace out of his

his view; and it seems clear, that he cannot justify an arrest for any such offence, without a warrant from a justice of the peace, &c. 2 Hawk. P. C. 81.

It seems clear, that such an arrest unlawfully made by a constable without a warrant, cannot be made good by a warrant taken out afterwards; also it hath been holden, that if a constable, after he hath arrested the party by force of any such warrant, suffer him to go at large, upon his promise to come again at such a time and find sureties, he cannot afterwards arrest him by force of the same warrant. However, if the party return and put himself again under custody of the constable, it seems that it may be probably argued, that the constable may lawfully detain him and bring him before the justice in pursuance of the warrant; for if a person taken by virtue of a civil process, and voluntarily suffered by the sheriff to escape, may afterwards upon his return to the prison be kept by the sheriff by virtue of the same process, unless the plaintiff rather chuse to take advantage of the escape against the sheriff; surely *a fortiori* upon an arrest for a crime, in which case it is to be presumed, that the publick good requires that the party be brought to justice, it shall likewise be lawful to detain a person returning to the officer after such an escape: however as the law seems not to be settled in relation to such an escape, after an arrest by virtue of civil process; so neither doth it seem to be clear in relation to an escape after an arrest by force of such a warrant from a justice of peace.

But it seems clear, that a constable cannot justify any arrest by force of a warrant from a justice of peace, which expressly appears on the face of it, to be for an offence whereof a justice of peace hath no jurisdiction, or to bring the party before him at a place out of the county for which he is a justice. But it seems, that he both may and ought to execute a general warrant to bring a person before a justice of peace, to answer such matters as shall be objected against him on the part of the king; for that the officer ought to presume, that the justice hath a jurisdiction of the matter, which he takes consuance of, unless the contrary appear; and it may often endanger the escape of the party to make known the crimes he is accused of. But it seems to be very questionable, whether a constable can justify the execution of a general warrant to search for felons or stolen goods, because such warrant seems to be illegal on the very face of it; for that it would be extremely hard, to leave it to the discretion of a common officer to arrest what persons, and search what houses he thinks fit: and if a justice cannot legally grant a blank warrant for the arrest of a single person, leaving it to the party to fill it up, surely he cannot grant such a general warrant, which might have the effect of a hundred blank warrants. 2 Hawk. P. C. 81, 82

Yet perhaps it is the better opinion at this day, that any constable, or even private person, to whom a warrant shall be directed from a justice of peace to arrest a particular person for felony, or any other misdemeanour within his jurisdiction, may lawfully execute it, whether the person mentioned in it be in truth guilty or innocent, and whether he were before indicted of the same offence or not; for however the justice himself may be punishable for granting such a warrant without sufficient grounds, it

is reasonable that he alone be answerable for it, and not the officer, who is not to examine or dispute the reasonableness of his proceeding; and therefore it seems that the old books which say generally, that no one can justify an arrest upon a suspicion of felony, unless he himself suspect the party, and unless the felony were in truth committed, ought to be intended only of arrests made by a person of his own head, or in obedience to the command of a constable, or other such like ministerial officer, and not of such as are made in pursuance of the warrant of a justice of peace; for in as much as it seems to be the constant and allowed practice of late, to make out warrants on the suspicion of felony before any indictment hath been found against the person suspected; and the same seems to be countenanced by 1 & 2 *Phil. & Ma.* 13. and 2 & 3 *Phil. & Ma. c.* 10. which direct in what manner persons brought before justices of peace upon suspicion, shall be examined in order to their being committed or bailed; and since the ancient opinion, that a justice of peace cannot make out a warrant against a man for felony, who has not been indicted before, hath been contradicted by constant experience; and since in the very same report in which this rule is laid down, that a justice of peace cannot make a warrant against a person who has not been indicted; it seems nevertheless to be agreed, that such a warrant is a good justification for the officer; and since none of the books cited by Sir *Edward Coke* to maintain the contrary opinion, mention the case of an arrest by force of a warrant from a justice of peace, but generally relate only to arrests by private persons of their own authority, or by the command of a constable; and since too the case, which is fullest to the purpose, wherein it is resolved, that an arrest of a person by the command of a bishop for saying, that he was not bound to pay tithes, could not be justified by force of the Statute, which authorized bishops to arrest persons for heresy, for which this reason is given among others, that the bishop himself could not justify such an arrest, and consequently could not authorize another to make it; it may be answered, that the resolution in that case doth not wholly depend upon this reason, but rather perhaps upon these; that the bishop's command was by parol only, and not by writing, and that the statute gave him no jurisdiction over points not heretical; and that the power of imprisoning persons for meer matters of opinion ought to be strictly construed: and farther, since the party injured by an arrest on a justice's warrant, hath a good action against the justice who granted it, if he did it maliciously of his own head, in order to oppress or defame the party, without any probable ground of suspicion; and therefore there is no necessity of giving a farther remedy against the officer who obeys the warrant: and farther, since it is in general a great discouragement to officers, to subject them to actions for endeavouring to serve the publick, by paying obedience to the precepts of those whose officers they are; it would certainly be very difficult at this day, to maintain an action against them for any arrest of this kind, unless the warrant appear to be for a matter whereof the justice has no jurisdiction. It seems indeed to be holden in *Broucher's* case in *Croke's* second report, that where an officer arrests a man by force of a warrant from a magistrate, *pro certis causis*, without shewing any cause in particular, he cannot justify himself in an action brought against him

him for such arrest, without setting forth the particular cause in his plea; and yet in this very report it seems to be allowed, that such a general warrant is good; and if so, it seems strange, that the officer should not be justified by setting forth the truth of his case; since if there were no good cause to justify the granting of the warrant, the magistrate ought to answer for it, not the officer. 2 *Hawk. P. C.* 82, 83.

As to such arrests by parol, it seems, that any such justice may lawfully by word of mouth, authorize any one to arrest another, who shall be guilty of any actual breach of the peace in his presence, or shall be engaged in a riot in his absence. 2 *Hawk. P. C.* 83.

As to the offences for which a warrant may be granted by justices of peace, there seems to be no doubt, but that it may be lawfully granted by any justice of peace for treason, felony or *præmunire*, or any other offence against the peace; also it seems clear, that wherever a statute gives to any one justice of peace a jurisdiction over any offence, or a power to require any person to do a certain thing ordained by such statute, it impliedly gives power to every such justice to make out a warrant to bring before him any person accused of such offence, or compellable to do the thing ordained by such statute; for it cannot but be intended, that a statute giving a person jurisdiction over an offence, doth mean also to give him the power incident to all courts, of compelling the party to come before him. And it would be to little purpose to authorize a man to require another to do a thing, if it were to be understood that the person authorized had no power to compel the party to come before him. 2 *Hawk. P. C.* 84.

But it seems, that anciently no one justice of peace could legally make out a warrant for an offence against a penal statute, or other misdemeanour, cognizable only by a sessions of two or more justices; for that one single justice of peace hath no jurisdiction of such offence, and regularly those only who have a jurisdiction over a cause can award process concerning it. Yet the long, constant, universal and uncontrouled practice of justices of peace seems to have altered the law in this particular, and to have given them an authority in relation to such arrests, not now to be disputed. 2 *Hawk. P. C.* 84.

And as to the evidence on which such a warrant is to be granted, it seems probable, that the practice of justices of peace in relation to this matter also, is now become a law, and that any justice of peace may justify the granting of a warrant for the arrest of any person upon strong grounds of suspicion for a felony or other misdemeanour, before any indictment hath been found against him. Yet in as much as justices of peace claim this power rather by connivance, than any express warrant of law, and since the undue execution of it may prove so highly prejudicial to the reputation as well as to the liberty of the party, a justice of peace cannot well be too tender in his proceeding of this kind, and seems to be punishable not only at the suit of the king, but also of the party grieved; if he grant any such warrant groundlessly and maliciously, without such a probable cause, as might induce a candid and impartial man to suspect the party to be guilty. 5 *Hawk. P. C.* 84, 85.

And since both *Coke* and *Hale* seem to disapprove of such warrants

Of arresting  
offenders by  
command of  
justices of  
peace.  
By warrant.  
&c.

granted upon suspicion, and the old books seem generally to disallow all arrests for the suspicion of felony made by any other person whatsoever, except the very person who hath the suspicion; it is certainly a safe way of proceeding for him who hath the suspicion to make the arrest in his proper person, and get a warrant from a justice of peace to the constable to keep the peace. 2 *Hawk. P. C.* 85.

And perhaps there may be this difference between the warrant of a justice of peace, for such causes which he has not authority to hear and determine as judge without the concurrence of others, and such warrant for an offence which he may so determine without the concurrence of any other: That in the former case, in as much as he rather proceeds ministerially than judicially, if he act corruptly, he is liable to an action at the suit of the party, as well as to an information at the suit of the king: but in the latter case he is punishable only at the suit of the king for that regularly no man is liable to an action for what he doth as judge. 2 *Hawk. P. C.* 85.

In what form  
such warrant  
is to be made.

1. It ought to be under the hand and seal of the justice who makes it out. 2. It ought to set forth the year and day wherein it is made, that in an action brought upon an arrest made by virtue of it, it may appear to have been prior to such arrest. 3. It is safe, but perhaps not necessary, in the body of the warrant to shew the place where it was made; yet it seems necessary to set forth the county in the margin, at least if it be not set forth in the body. 4. It may be made either in the name of the king, or of the justice himself. 5. If it be for the peace or good behaviour, it is advisable to set forth the special cause upon which it is granted; but if it be for treason or felony, or other offence of an enormous nature, it is said, that it is not necessary to set it forth; and it seems to be rather discretionary, than necessary to set it forth in any case. 6. Such a warrant may be either general, to bring the party before any justice of peace of the county, or special, to bring him before the justice only who granted it. 7. It may be directed to the sheriff, bailiff, constable, or to any indifferent person by name, who is no officer; for that the justice may authorize any one to be his officer, whom he pleases to make such, yet it is most advisable to direct it to the constable of the precinct wherein it is to be executed; for that no other constable, and *a fortiori* no private person, is compellable to serve it. 2 *Hawk. P. C.* 85.

In what man-  
ner such war-  
rant is to be  
executed.

As to this point, the following rules are laid down; 1st, That a bailiff or a constable, if they be sworn and commonly known to be officers, and act within their own precincts, need not shew their warrant to the party, notwithstanding he demand the sight of it, but that these and all other persons whatsoever making an arrest, ought to acquaint the party with the substance of their warrants, and that all private persons, to whom such warrants shall be directed, and even officers, if they be not sworn and commonly known; and even these, if they act out of their own precincts, must shew their warrants, if demanded. 2dly, That the sheriff having such warrant directed to him, may authorize others to execute it; but that every other person to whom it is directed, must personally execute it; yet it seems, that any one may lawfully assist him. 3dly, That if a warrant be generally directed to all constables, no one can execute it out of his own precinct

precinct; but if it be directed to a particular constable by name, he may execute it any where within the jurisdiction of the justice. 2 *Hawk. P. C.* 85, 86.

As to breaking open doors in order to make an arrest, it must be observed, that the law doth never allow of such extremities but in cases of necessity; and therefore, that no one can justify the breaking open another's doors to make an arrest, unless he first signify to those in the house the cause of his coming, and request them to give him admittance. But where a person authorized to arrest another who is sheltered in a house, is denied quietly to enter into it, in order to take him, it seems generally to be agreed, that he may justify breaking open the doors in the following instances: 1st, Upon a *capias* grounded upon an indictment for any crime whatsoever, or upon a *capias* from the *King's Bench* or *Chancery*, to compel a man to find sureties for the peace or good behaviour, or even upon a warrant from a justice of peace for such purpose. 2dly, Upon a *capias utlagatum*, or *capias pro fine*, in any action whatsoever. 3dly, Upon the warrant of a justice of peace, for the levying of a forfeiture, in execution of a judgment, or conviction for it grounded on any statute which gives the whole, or but part of such forfeiture to the King, and authorizes the justices of the peace to give such judgment or conviction for it. 4thly, Where a forcible entry or detainer is either found by inquisition before justices of peace, or appears upon their view. 5thly, Where one known to have committed a treason or felony, or to have given another a dangerous wound, is pursued either with or without a warrant, by a constable or private person: but where one lies under a probable suspicion only, and is not indicted, it seems the better opinion at this day, that no one can justify the breaking open doors in order to apprehend him. 6thly, Where an affray is made in an house in the view or hearing of a constable; or where those who have made an affray in his presence fly to a house, and are immediately pursued by him, and he is not suffered to enter; in order to suppress the affray in the first case, or to apprehend the affrayers in either case. 7thly, Whenever a person is lawfully arrested for any cause, and afterwards escapes, and shelters himself in a house. 2 *Hawk. P. C.* 86, 87.

Also it is enacted by stat. 3 *Jac. 1. c. 4. sect. 35.* That upon any lawful writ, warrant, or process, awarded to any sheriff, or other officer, for the taking of any popish recusant, standing excommunicated for such recusancy, it shall be lawful, if need be, to break open any house. But it hath been resolved, that where justices of peace are by virtue of a statute authorized to require persons to come before them, to take certain oaths, prescribed by such statute, the officer cannot lawfully break open the doors of the persons who shall be named in any warrant made in pursuance of such statute, in order to be brought before the justices to take such oath, because such warrant is not grounded on a precedent offence: neither doth it appear, that the party either is or will be guilty of any: but it seems clear, that if an officer enter into any house to serve any such warrant, and the doors of the house be locked upon him, being in such house, he or his friends may justify breaking them open, in order to regain his liberty;

for



for that even in the execution of civil process, the law allows of the breaking open doors in the like circumstances. 2 *Hawk. P. C.* 87. For other matters, see **Constable, Justices of Peace, Warrant, Watch.**

## Articles of the Peace.

**A**RTICLES of the peace are a declaration in writing, made upon oath by a person who applies to the court of *Chancery* or *King's Bench* for surety or process of the peace or good behaviour, of the causes for which such process shall be granted or awarded. Stat. 21 *Jac.* 1. c. 8. *sect.* 2.

21 *Jac.* 1.  
c. 8.

**Stat.** 21 *Jac.* 1. c. 8. [*A. D.* 1623. intituled,] "An act to prevent and punish the abuses in procuring process and *superfedeas* of the peace and good behaviour, out of his majesty's courts at *Westminster*, &c."

"Whereas divers turbulent and contentious persons, some out of malice, and others in hope of gain, by way of composition, do oftentimes upon their corporal oaths, peremptorily and corruptly taken, or otherwise upon false suggestions and furnishes, procure process of the peace or good behaviour out of his majesty's courts of *Chancery* and *King's Bench*, against divers of his majesty's quiet subjects, whose dwellings and abodes are (for the most part) in counties far distant and remote from the said courts, to their intolerable trouble and vexation, whereas they might, upon good cause shewed, receive justice at the hands of the justices of the peace in the counties where they dwelt;

Process and writs of *superfedeas* of the peace, or good behaviour, shall not be granted, but upon motion in open court.

"*Sect.* 2. For remedy whereof, be it enacted by the authority of this present parliament, that all process of the peace or good behaviour, after the end of this session of parliament to be granted or awarded out of the same courts, or either of them, against any person or persons whatsoever, at the suit of, or by the prosecution of any person or persons whatsoever, shall be void, and of none effect, unless such process shall be so granted or awarded, upon motion first made before the judge or judges of the same courts respectively, (sitting in open court, and upon declaration in writing, upon their corporal oaths, to be then exhibited unto them by the parties which shall desire such process) of the causes for which such process shall be granted or awarded, by or out of any the said courts respectively, and unless that such motion and declaration be mentioned to be made upon the back of the writ; the said writings there to be entred and remain of record: (2) And that if it shall afterwards appear unto the said courts, or either of them respectively, that the causes expressed in such writings, or any of them, be untrue; that then the judge or judges of the said courts, or either of them respectively, shall and may award such costs and damages unto the parties grieved, for their or any of their wrongful vexations in that

that behalf, as they shall think fit: and that the party or parties so offending shall and may be committed to prison by such judge or judges, until he or they pay the said costs and damages. (3) And whereas divers turbulent and contentious persons, deservedly fearing to be bound to the peace, or good behaviour by the justices of peace of the counties where they dwell, do oftentimes procure themselves to be bound to the peace, or good behaviour, in the said court, or one of them, upon insufficient sureties, or upon colourable prosecution of some person or persons, who will be ready at all times to release them at their own pleasure; whereupon his majesty's writs of *superfedeas* are oftentimes directed to the justices of peace, and other his majesty's officers, requiring them, and every of them, to forbear to arrest or imprison the parties aforesaid, for the causes abovesaid; by means whereof, the said turbulent and contentious persons misdeemean themselves amongst their neighbours with impunity, to the great offence and disturbance of their neighbours amongst whom they converse and live, and to the affront of the justices of peace, and to the evil example and encouragement of like evil-disposed persons:

*Seet. 3.* " Be it therefore enacted by the authority aforesaid, that all writs of *superfedeas* after the end of this present session of parliament, to be granted by, or out of either of the courts aforesaid, shall be void and of none effect, unless such process be granted likewise upon motion in open court first made, as aforesaid, and upon sufficient sureties, as shall appear unto the judge or judges of the same court respectively upon oath, to be assessed at five pounds lands, or ten pounds in goods in the subsidy-book, at the least; (2) which oaths, and the names of such sureties, with the places of their abode, and where they stand so assessed in the subsidy-books, shall be entred and remain of record in the same courts: (3) And unless it shall also first appear unto the said judge or judges, from whom such *superfedeas* is desired, that the process of the peace, or good behaviour, is prosecuted against him or them desiring such *superfedeas bona fide*, by some party grieved in that court, out of which such *superfedeas* is desired to be so awarded and directed.

*Seet. 4.* " And whereas divers lewd and evil-disposed persons, commonly called, common bailers, or knights of the post, being base and beggarly persons, do oftentimes procure themselves to be assessed at high rates in the subsidy-books, and sometimes do falsely take upon them the names of other men of good ability, of purpose to enable themselves to be accepted for bail, which persons, being of small or no ability or worth, are ready for lucre and gain, to become bound by recognizance, as sureties for such persons as shall procure themselves to be bound to the peace or good behaviour, as aforesaid, by means whereof the judge or judges of the said courts not knowing them, may be easily abused, and justice deluded:

*Seet. 5.* " Be it further enacted by the authority aforesaid, that the judge or judges of the courts aforesaid, respectively, or either of them, upon proof of any the misdemeanors aforesaid, to be committed in the obtaining of the aforesaid writs of *superfedeas*, or procuring such surety, as aforesaid, shall and may likewise punish the false and insufficient sureties, the judges,

False sureties  
procured for  
the gaining of  
writs of *super-  
fedeas* shall be  
punished by  
the judges,

ties and bailers aforesaid, and the procurers thereof, according to their discretions, so as such punishment extend not to the loss of life or member.

His lady exhibited articles of the peace against him, and was ordered security upon them; When my lord came into court, Mr. *Lloyd* desired the articles might be read, and insisted they were no ground for demanding security; or if they were, yet the fact of a separation under articles, upon which the complaint was grounded, was false, and he offered to prove it so. *Strange* contra, opposed going into any such inquiry, it having never been done: and the course of the law had been, to give that credit to the oath of the party, as to order security immediately upon it; mentioning also the inconvenience in opening a door for vying and revying on such occasions. He admitted, that the court might properly review the articles, and hear any objections arising on the face of them. *Et per curiam*, That is all we can do, the other never was attempted before, and we must preserve the course of the court by taking the articles to be true. Upon the review the court was of opinion, the facts as stated required security. And it was given accordingly.

He exhibited articles of the peace against his wife, and the court received the same without any objection.

Husband may swear the peace against his wife. 2

*Stran.* 1207. *East.* 17 *Geo.* 2 *Sims's* case.

A woman exhibited articles of the peace, stiling herself the wife of the defendant, setting out acts of cruelty, and the pendency of a suit in the ecclesiastical court for restitution of conjugal rites. The defendant coming to put in bail, insisted the recognizance should not be taken so as to carry any admission of the marriage. And the court ordered it should run thus. "To keep the peace towards our sovereign lord the king, and all his liege people, and particularly towards *Hannab Penn*, who hath exhibited articles of the peace against him the said *James Bambridge*, by the name of *Hannab Bambridge* the wife of him the said *James*, and that he shall not depart the court without leave, &c."

*Strange* moved for a *Mandamus* to three justices of peace in *Brecon*, to take security on articles of the peace exhibited against the defendant in *B. R.* and produced an affidavit of his being seventy years of age, and unable to travel, and cited *Seymour's* case, *Mich.* 6 *Ann.* and it was granted in this case. *N. B. Trin' sequen'*, on affidavit of having kept the peace, and being unable to come up, the recognizance was discharged.

Upon exhibiting articles of the peace against the defendant, it was objected by Mr. *Wearg*, that the fact whereon the prosecutor grounds his apprehension of danger appeared to be committed before the act of grace, and pardoned thereby, and the crime by that being gone, it must be considered as never done; and the court never demands security of the peace barely on a man's swearing he goes in danger of his life, without laying some fact before the court, that it may appear to be such a *metus qui cadere possit in constantem virum*. *Sed per curiam*: Suppose it was threats only, would they not be a ground for articles, though they are not punishable? though the fact is pardoned, yet it may be instanced for an inducement to us to believe

How to take security of the peace where a marriage is disputed. 2  
*Stran.* 1231.  
*Trin.* 18 *Geo.* 2  
*Dominus Rex v. Bambridge.*

*Mandamus* to take security on articles. 2  
*Stran.* 835.  
*Trin.* 3 *Geo.* 2  
*Dominus Rex v. Lewis.*

A fact committed before the act of grace may be a ground for articles of the peace.  
*Stran.* 473.  
*Mich.* 8 *Geo.*  
*Dominus Rex v. Mendez.*

believe the defendant a dangerous person. The defendant entered into a recognizance to keep the peace.

The court *rejected articles of the peace*, which one *Thomas Borough*, of the Articles of the *Devizes*, offered to swear against the defendant who *resided at the same place*. Their reason, and their only one (for the charge was exceedingly strong) was because the exhibitant had not applied or endeavoured to apply to any justice of peace in his *own neighbourhood*, but had chosen to come hither, at such a distance from the defendant's residence: which method would put the defendant to the unnecessary inconvenience of being brought up hither, instead of finding security in the country. For which reason, they directed the exhibitant to go before some justice of peace in the *neighbourhood*; and there exhibit his articles, and pray the security of the peace, which the defendant might then find in the country, without coming up to *London* for that purpose.

The defendant stood convicted of a very gross, malicious, corrupt and wilful perjury, in certain articles of the peace exhibited by him upon oath, against Sir *Thomas Allen* and his servants, for which perjury he had some time ago, been committed in court, upon his voluntarily appearing there, to complain of difficulties which he pretended to meet with, in obtaining process upon his articles: Which *articles* were very *express* and *positive*; and, by the course of the court, must have been looked upon by the court to be *true*, according to the declared opinion of the court in lord and lady *Vane's case* [See page 136.] but, upon this man's subsequent application as above, and upon reading the affidavits offered by Sir *Thomas* and his servants and others, in answer to that complaint, it appeared manifestly to the court to be a *malicious*, voluntary and gross perjury. Whereupon the court not only rejected his complaint, and *stayed process* against the defendants, but also *committed* the complainant for *perjury*; taking a recognizance from the defendant's clerk in court "to prosecute him for the perjury." Which Perjury being afterwards fully proved upon the trial, the sentence now pronounced against him was—To be set in and upon the pillory at *Charing Cross* (on the 16th *July* next,) for one hour; and to be transported for *seven* years. Note—He appeared, throughout the whole of this transaction, to be a very malicious dangerous fellow.

On this woman's offering to exhibit articles of the peace against these two persons, it appeared that the facts charged were done at *Portsmouth*. Whereupon the court objected to her, that she might as well have applied to a justice of peace in the neighbourhood: and then the defendants would not be under a necessity of coming up to *London*, to put in bail. It was answered, that if there should be any particular inconvenience arising therefrom, there might be a *Mandamus* to a justice of peace in the county, empowering him to take the security *there*: and of this, Mr. *Harvey* (as *Amicus curiæ*) mentioned several instances within his own observation and memory. At length, Mr. *Atthorpe* (secondary of the Crown-office) proposed, and the court came into this expedient, *viz.* That on issuing the attachment of the peace, which is of course made out upon the court's receiving the articles praying security of the peace, an *indorsement* should be at the same

peace ought to be exhibited in the neighbourhood; that the security may be given there 2 Bur. Rep. 780. East. 32 Geo. 2. Rex v. Richard Waite.  
Articles of the peace appearing false and malicious, process was stayed, and the exhibitant committed for perjury. 2 Bur. Rep. 806. Trin. 32 & 33 Geo. 2. Rex v. Robert Parnell.

Articles of the peace being exhibited in London, for a fact done at Portsmouth, attachment ordered to be indorsed with a direction to any justice to take security. &c. 2 Bur. Rep. 1039, 1040. Trin. 33 & 34 Geo. 2.

Margaret  
Hutt's case, or  
Rex v. Bow-  
miller and  
Epworth.

time made thereon, authorizing and directing any justice or justices of peace in that county (*Southampton*) to take the security of the peace there; specifying the particular sums wherein the principals and also their sureties should be bound. *Per Cur.* It was ordered accordingly.

*For other matters, see Surety of the Peace.*

## Assault and Battery.

**A**SSAULT is derived from the old latin word *assultus*, that is, *a leaping on*, or from the French verb *assailer*, to attack, and signifies an attempt or offer, with force and violence, to do a corporal hurt to another, as by striking at him without a weapon; or presenting a gun at him, at such a distance to which the gun will carry; or pointing a pitch-fork at him, standing within the reach of it; or by holding up one's fist at him; or by any other such like act, done in any threatening manner. 1 *Hawk.* 133. **Battery**, (from the French *Battre*, to strike, or from the Saxon *Batte*, a club) seems to be when any injury whatsoever, be it never so small, is actually done to the person of a man, in an angry or revengeful, or rude, or insolent manner; as by spitting in his face, or any way touching him in anger, or violently jostling him out of the way, and the like. 1 *Hawk.* 134.

Any injury whatsoever, be it never so small, being actually done to the person of a man, in an angry or revengeful, or rude or insolent manner, as by spitting in his face, or any way touching him in anger, or violently jostling him out of the way are batteries in the eye of the law. 6 *Mod.* 149, 172. 1 *Mod.* 3. 3 *Lev.* 404. 1 *Hawk. P. C.* 134.

But to lay one's hand gently on another, whom an officer has a warrant to arrest, and to tell the officer that this is the man he wants, is not a battery. 2 *Roll. Abr.* 546. 1 *Hawk. P. C.* 134.

So if two by consent play at cudgels, and one happens to hurt the other, as their intent was lawful and commendable, in promoting courage and activity, it does not seem to amount to battery. *Dalt. c.* 22. *Bro. Coron.* 229.

If *A.* lays his hand on his sword, and says, that *if it were not assize time I would not take such language from you*, that is no assault, for it is plain he did not design to do him any corporal hurt at that time, and a man's intention must operate with his act in constituting an assault. 1 *Mod.* 3.

It seems agreed, that at this day no words whatsoever, be they never so provoking, can amount to an assault, notwithstanding the many ancient opinions to the contrary. 1 *Hawk. P. C.* 134.

Every battery includes an assault; therefore if the defendant be found guilty of the battery, it is sufficient. *Salk.* 384. 1 *Hawk. P. C.* 134.

So

So if one soldier hurts another by discharging a gun in exercise, this cannot amount to a battery, though if it be done without sufficient caution, he is liable to an action at the suit of the party injured. *Hob. 134. 2 Roll. Abr. 548.*

If an officer, having a warrant against one who will not suffer himself to be arrested, beat or wound him in the attempt to take him; or if a parent in a reasonable manner chastise his child, or a master his servant, being actually in his service at the time; or a schoolmaster his scholar, or a gaoler his prisoner, or even a husband his wife; or if one confine a friend who is mad, and bind and beat him, in such manner as is proper in such circumstances; or if a man force a sword from one who offers to kill another therewith; or if a man gently lay hands on another, and thereby stay him from inciting a dog against a third person; or if I beat one, without wounding him, or throwing at him a dangerous weapon, who wrongfully endeavours with violence to dispossess me of my land, or goods, and will not desist upon my laying my hands gently on him, and disturbing him; or if a man beat, or, as some say, wound, or maim one who makes an assault upon his person, or that of his wife, parent, child, or master, especially, if it appear that he did all he could to avoid fighting before he gave the wound; or if a man fight with or beat one who attempts to kill any stranger; or if a man even threaten to kill one who puts him in fear of death in such a place where he cannot safely fly from him; or if one imprison those whom he sees fighting, till the heat be over; in these cases it seems the party may justify the assault and battery. 1 *Hawk. P. C. 130, 131.* A person may justify an assault, in defence of his person, or of his wife, or master or parent, or child within age; and even a wounding may be justified in defence of his person, but not of his possessions. 3 *Salk. 46.*

In what cases an assault and battery may be justified.

And where a man in his own defence beats another who first assaults him, he may take advantage thereof, both upon an indictment and upon an action; but with this difference, that on an indictment he may give it in evidence upon the plea of not guilty, but on an action he must plead it specially. 1 *Hawk. 134.* There is no doubt but that the wrong-doer is subject both to an action at the suit of the party, wherein he shall render damages; and also to an indictment at the suit of the king, wherein he shall be fined according to the heinousness of the offence. 1 *Hawk. 134.*

How unlawful assaults and batteries are punished.

**Stat. 9 Ann. c. 16.** [*A. D. 1710. intituled,*] “An act to make an attempt on the life of a privy counsellor, in the execution of his office, to be felony without benefit of clergy.”

“Whereas *Anthony de Guiscard*, commonly called *marquis de Guiscard*, a French papist, residing in *England* under her majesty’s protection, and subsisted by her majesty’s bounty for some years past, was charged with holding a traitorous correspondence with *France*, and being taken into custody for such his treason by *Nathan Wilcocks*, of the parish of *St. James Westminster* in the county of *Middlesex*, gentleman, one of her majesty’s messengers

After 1 May  
1711. who-  
ever shall  
attempt to kill,  
&c. a Privy  
Counsellor in  
the execution  
of his office,  
declared a  
felon, and shall  
suffer death as  
such without  
clergy.

Nathan Wil-  
cocks, &c. sa-  
ved harmless.

fengers in ordinary, by virtue of a warrant of the right honourable *Henry Saint John* esq; one of her majesty's principal secretaries of state, and on the eighth day of *March* in the year of our Lord one thousand seven hundred and ten, being under examination before a committee of her majesty's most honourable privy council for the same, perceiving his said treason to have been fully detected, being conscious of his guilt, and dreading the pain and infamy of his approaching punishment, in hopes of preventing the same, and in revenge for the discovery of the said offence, did, with a penknife, in a barbarous and villainous manner, stab the right honourable *Robert Harley*, esq; chancellor of her majesty's *Exchequer*, and one of her majesty's privy council, then present, assisting in that committee, and endeavoured to wound others of her majesty's privy council there: And whereas in the preventing further mischief from the rage of the said *Anthony de Guiscard*, and in apprehending and securing him, he the said *Anthony de Guiscard* was necessarily and unavoidably bruised and wounded, and is since dead in the prison of *Newgate* in the city of *London*: And whereas no sufficient punishment is provided for assaulting or wounding a privy counsellor in the execution of his office, by any law now in being; to the end that all persons may be deterred from committing such offences, and for preventing the like mischiefs for the time to come; Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that if any person or persons, from and after the first day of *May* in the year of our Lord one thousand seven hundred and eleven, shall unlawfully attempt to kill, or shall unlawfully assault, and strike or wound any person, being one of the most honourable privy council of her majesty, her heirs or successors, when in the execution of his office of a privy counsellor in council, or in any committee of council, that then the person or persons so offending, being thereof convicted in due form of law, shall be and are hereby declared to be felons, and shall suffer death as in cases of felony, without the benefit of clergy.

*Sett.* 2. "And be it further enacted by the authority aforesaid, that the said *Nathan Wilcocks* (who by an inquisition taken the seventeenth day of the said month of *March*, before *George Rivers* esq; coroner of the said city of *London*, on view of the body of the said *Anthony de Guiscard*, then and there lying dead) is found to have given him the said *Anthony de Guiscard* several mortal bruises of which he died, and all and every other person and persons, who were assisting in the defence of the said *Robert Harley*, and in the apprehending and securing the said *Anthony de Guiscard*, and did, in so doing, assault, bruise, or wound the said *Anthony de Guiscard*, shall be, and are hereby indemnified and saved harmless therefore; and such their actings and doings are hereby declared to have been necessary and lawful."

**Stat. 7 Geo. 2. c. 21.** [*A. D. 1734. intituled,*] “An act for the more effectual punishment of assaults with intent to commit robbery.”

“Whereas many of his majesty’s subjects have of late frequently been put in great fear and danger of their lives, by wicked and ill-disposed persons assaulting and attempting to rob them: And whereas the punishment of such offenders is not adequate to the heinousness of that crime, nor sufficient to deter wicked persons from such attempts; to the end therefore that all persons may be deterred from committing such offences, and for the greater punishment of such offenders, and for the more effectual preventing of the like mischiefs for the future: Be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person or persons, from and after the first day of *May* in the year of our Lord one thousand seven hundred and thirty-four, shall, with any offensive weapon or instrument, unlawfully and maliciously assault, or shall by menaces, or in or by any forcible or violent manner, demand any money, goods or chattels, of or from any other person or persons with a felonious intent to rob or commit robbery upon such person or persons, that then and in every such case all and every such person and persons so offending, being thereof lawfully convicted, shall be, and be adjudged guilty of felony, and every such offender and offenders shall be subject and liable to be transported as in cases of felony; and the courts by and before whom he, she, or they shall be tried and convicted, shall have full power and authority of transporting such offenders for the space of seven years, upon the like terms and conditions, and by the same ways and means, and in like manner as other felons may or are to be transported to any of his majesty’s colonies or plantations in *America*, by force or virtue of any law for that purpose now in being.

After 1 May, 1734, persons convicted of assaulting others with offensive weapons, and a design to rob, shall be transported for 7 years.

**Secl. 2.** “And be it further enacted by the authority aforesaid, that if any such offender or offenders aforesaid, who shall be ordered for transportation by or by virtue of this present act, shall break gaol, or escape before such transportation, or shall return into any part of *Great Britain* or *Ireland* before the expiration of the said seven years, for which such offender or offenders shall be so ordered to be transported, as aforesaid, contrary to the intent and meaning hereof; all and every such person and persons so breaking gaol, escaping, or returning into any part of *Great Britain* or *Ireland*, within the time aforesaid, being thereof lawfully convicted, shall suffer death as felons, and have execution awarded against them as persons attainted of felony, without benefit of clergy.”

Such convicts breaking gaol, or unlawfully returning from transportation, shall suffer death.

**Stat. 6 Geo. 1. c. 23.** [*A. D. 1719. intituled,*] “An act for the further preventing robbery, burglary, and other felonies, and for the more effectual transportation of felons.”

**Secl. 11.** “And be it further enacted by the authority aforesaid, that if any person or persons shall at any time or times, from and after the

After June 24 1720, assaulting any person in the streets,



&c. to tear  
their cloaths,  
&c. shall be  
guilty of  
felony, and  
may be trans-  
ported for 7  
years.

twenty-fourth day of *June* in the year of our Lord one thousand seven hundred and twenty, wilfully and maliciously assault any person or persons in the publick streets or highways, with an intent to tear, spoil, cut, burn, or deface, and shall tear, spoil, cut, burn, or deface the garments or cloaths of such person or persons, that then all and every person and persons so offending, being thereof lawfully convicted, shall be and be adjudged to be guilty of felony; and every such felon and felons shall be subject, and liable to the like pains and penalties as in case of felony; and the courts by and before whom he, she, or they shall be tried, shall have full power and authority of transporting such felons for the space of seven years, upon the like terms and conditions as are given, directed, or enacted by this or the before recited act."

## Assizes.

**A**SSISE, (Fr. *assis*) according to our ancient books is defined to be an assembly of knights, and other substantial men, with the bailiff or justice in a certain place, and at a certain time appointed. *Custom. Normand. cap. 24.* This word is probably derived from the *Latin* verb *assideo*, to sit together; and is also taken for the court, place or time, when and where the writs and proceffes of *assise* are handled or taken. And in this signification *assise* is general; as when the justices go their several circuits with commission to take all assises; or special, where a special commission is granted to certain persons, (formerly oftentimes done) for taking an *assise* upon one or two disseisins only. *Braet. lib. 5. Cowell.*

Concerning the general *assise*, all the counties of *England* are divided into six circuits, and two judges are assigned by the king's commission to every circuit, who hold their *assises* twice a year in every county, (except in *Middlesex*, where the King's courts of record do sit, and where his courts for his counties palatine are held) and have five several commissions. 1. Of *oyer and terminer*, directed to them and many other gentlemen of the county, by which they are empowered to try treasons, felonies, &c. and this is the largest commission they have. 2. Of *gaol-delivery*, directed to the judges and clerk of *assise* associate, which gives them power to try every prisoner in the gaol committed for any offence whatsoever, but none but prisoners in the gaol; so that one way or other they rid the gaol of all the prisoners in it. 3. Of *assise*, directed to themselves only and the clerk of *assise*, to take *assises* and do right upon writs of *assise* brought before them by such as are wrongfully thrust out of their lands and possessions: which writs were heretofore frequent, but now men's possessions are sooner recovered by ejectments, &c. 4. Of *nisi prius*, directed to the judges and clerk of *assise*, by which the civil causes grown to issue in the courts above, are tried in the vacation by a jury of twelve men

men of the county where the cause of action arises; and on return of the verdict of the jury to the court above, the judges there give judgment. 5. *A commission of the peace*, in every county of the circuits; and all justices of the peace of the county are bound to be present at the *assizes*; and sheriffs are also to give their attendance on the judges, or they shall be fined. *Bacon's Elem.* 15, 16, &c.

There is a commission of the peace, *oyer and terminer* and gaol-delivery of *Newgate*, held several times in a year, for the city of *London* and county of *Middlesex*, at *Justice-Hall* in the *Old Baily*, where the lord mayor is the chief judge. In *Wales* there are but two circuits, *North* and *South Wales*; for each of which the king appoints two persons learned in the laws to be judges. *Stat.* 18 *Eliz.* cap. 8. If justices sit by force of a commission, and do not adjourn the commission, it is determined. 4 *Inst.* 265. The constitution of the justices of *assise* was begun by *Henry 2.* though somewhat different from what they now are: and by *Magna Charta*, justices shall be sent through every county once a year, who with the knights of the respective shires shall take assizes of *novel disseisin*, &c. in their proper shires, and what cannot be determined there, shall be ended by them in some other place in their circuit; and if it be too difficult for them, it shall be referred to the justices of the bench, there to be ended. 9 *Hen. 3.* cap. 12. Justices of *assise*, &c. are to hold their sessions in the chief towns of the county; and their records to be sent into the *Exchequer*. 6 *R.* 2. 9 *Ed. 3.* By *stat.* 21 *Geo. 2.* c. 12. the summer assizes in *Buckinghamshire* shall be held at the town of *Buckingham*. *Assise* is likewise used for a jury, by whom assizes of *novel disseisin* are tried. *Lit.* cap. *Rents*. The panels of assizes shall be arrayed, and a copy indented delivered by the sheriff, &c. if demanded, on pain of 40*l.* by statute 6 *Hen. 6.* cap. 2. And *assise* is taken for a writ for recovery of possession of things immoveable, whereof any one and his ancestors have been disseised. Likewise in another sense, it signifies an ordinance or statute. *Reg. Orig.* 279. *Lit.* cap. *Rents*. *Termes de la Ley*. And there are four writs of *assise*: an assise of *novel disseisin*, an assise of *mort d'ancestor*, an assise of *darrein presentment*, and an assise of *juris utrum*. *Co. Lit.* 155. a.

## Attachment.

**A**TTACHMENT, (from the Fr. *attacher*) is a process that issues at the discretion of the judges of a court of record, against a person for some contempt, for which he is to be committed, and may be awarded by them upon a bare suggestion, or on their own knowledge without any appeal, indictment or information; for though by the statute of *Magna Charta*, none are to be imprisoned *sine judicio parium, vel per legem terræ*, without judgment of their peers or equals, or by the law of the land; yet this

summary

## Attachment.

summary method of proceeding being absolutely necessary to the furtherance and execution of justice, seems to have been long practised, and is certainly now established as part of the law of the land. *Lamb. Eiren. lib. 1. c. 16. 1 Bac. Abr. 180.*

All courts of record have a discretionary power over their own officers, and are to see that no abuses be committed by them, which may bring disgrace on the courts themselves; therefore if a sheriff or other officer shall be guilty of a corrupt practice in not serving a writ; as if he refuse to do it, unless paid an unreasonable gratuity from the plaintiff, or receive a bribe from the defendant, or give him notice to remove his person or effects, in order to prevent the service of any writ; the court which awarded it may punish such offences in such manner as shall seem proper, by attachment, &c. as well as the court of *King's Bench*, which has a general superintendancy over all crimes whatsoever, but commonly leaves offences of this kind, in relation to causes in other courts, to be punished by such courts to which they more immediately belong. *2 Hawk. 142.*

Sessions cannot award an attachment for not performing an order. *2 Sess. Ca. 176. Hil. 8 Geo. 2. The King against Bartlet.*

An order had been made on overseers to pay over fifty-six pounds to the succeeding overseers on the *43 Eliz. cap. 2.* Appeal to the sessions, who confirmed the order, and for non-compliance made an order against the defendant for an attachment for a contempt. Moved to quash this order for an attachment, on the common principle, that the sessions has no power to award an attachment. But the party ought to have been indicted. To which it was answered, that the statute of *Eliz.* gives the session a general jurisdiction to make such order as to them should seem meet. And though in general he admitted the sessions could not award an attachment; yet under this act they had a general authority, and as a court of record they might award an attachment for a contempt. *But by the court:* They cannot award an attachment; said they would not determine how it would have been if they had committed him, but the ordinary and proper method is by indictment. Order quashed.

## Attainder.

**A**TTAINDER is a conviction of any person of a crime or fault whereof he was not convicted before; as if a man hath committed felony, or treason, and thereof is indicted, arraigned, and found guilty, *and hath judgment*, then he is said to be *attainted*. And this may be two ways, the one upon appearance, the other upon default. The attainder upon appearance is by confession, or verdict; the attainder upon default is by process until he be outlawed. *Termes de la ley.*

The difference between a man *attainted* and *convicted* is, that a man is said to be convicted *before* he hath judgment, as if a man be convicted by confession or verdict; and when he hath his judgment upon the verdict

or

or confession, then he is said to be *attainted*. Co. Lit. 390. b. For the consequences of being attainted or convicted of treason or felony, see *Treason, Felony*.

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## Attaint.

**A**TTAINT is a writ that lieth after judgment against a jury that have given a false verdict in any court of record, in an action real or personal, where the debt or damages amount to above 40 s. It is called *attaint*, because the party endeavours thereby to stain or *taint* the credit of the jury with perjury, by whose verdict he is aggrieved; for he shall have this writ against the twelve men; and when they are at issue, it shall be tried by twenty-four jurors, and if the false verdict be found, the twelve men are attainted; and then the judgment shall be, that their meadows shall be plowed, their houses broken down, their woods turned up, and all their lands and tenements forfeited to the King; but if it pass against him who brought the attaint, he shall be imprisoned, and grievously ransomed at the King's will. *Cowell. Termes de la ley. See Co. Lit. 294. b. See Jury.*

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## Attorney.

**A**TTORNEY, (*attornatus*) is a person appointed by another to do any thing in his stead, and is as much as *procurator* or *syndicus* in the civil law. *Cowell. West in his Symb. part. 1. lib. 2. sect. 559.* defines *attornies* thus: *Attornies* are such persons as by the consent, commandment, or request of another, do take heed, see to and take upon them the charge of other men's business in their absence.—But the person here treated of is an attorney at law, who is appointed to prosecute and defend for his client, and is considered as an officer belonging to the courts of justice; concerning whom are several statutes and adjudications.

Before the statute of *West. 2. c. 10. [13 Edw. 1. A. D. 1285.]* all attornies were made by letters patent under the great seal, commanding the justices to admit the person to be his *attorney*. These patents, where they were obtained, seemed to have been inrolled by a proper officer, called the clerk of the warrants; and also the courts inrolled those patents on which any proceedings were. If such letters patent could not be obtained, the persons were obliged to appear each day in court in their proper persons. *Gilb. H. C. P. 32, 33.*

The said statute of *West. 2.* gives to all persons a liberty of appearing, and appointing an *attorney*, as if they had letters patent, and therefore the clerk of the warrants received each person's warrant, and upon the warrant it equally appeared to the court, that he had appointed such a one his attorney to the end of the cause, unless revoked; so that on each act there is no occasion of the plaintiff's and defendant's presence, as was used before that time. This authority continues till judgment, and for a year and a day, and afterwards to sue out execution, and for a longer time, if they continue execution; but if not, the judgment is supposed to be satisfied; and to make it appear otherwise, the plaintiff must again come into court, which he either does by a *scire fac'*, or an action of debt on the judgment. *Gilb. H. C. P. 33.*

33 Hen. 6.  
c. 7.

**Stat.** 33 Hen. 6. cap. 7. [*A. D. 1455. intituled,*] "How many attorneys may be in *Norfolk* and *Suffolk*, how many in *Norwich*."

4 Inst 76.  
A practice of  
contentious  
attornies, to  
stir up suits  
for their pri-  
vate profits.

*Item*, "Whereas of time not long past within the city of *Norwich*, and the counties of *Norfolk* and *Suffolk*, there were no more but six or eight attornies at the most, coming to the king's courts, in which time great tranquillity reigned in the said city and counties, and little trouble or vexation was made by untrue and foreign suits; (2) and now so it is, that in the said city and counties there be fourscore attornies, or more, the more part of them having no other thing to live upon, but only his gain by the practice of attorneyship; and also the more part of them not being of sufficient knowledge to be an attorney, (3) which come to every fair, market, and other places, where is any assembly of people, exhorting, procuring, moving, and inciting the people to attempt untrue and foreign suits for small trespasses, little offences, and small sums of debt, whose actions be triable and determinable in court barons, (4) whereby proceed many suits, more of evil will and malice, than of truth of the thing, to the manifold vexations and no little damage of the inhabitants of the said city and counties, and also to the perpetual diminution of all the court barons in the said counties, unless convenient remedy be provided in this behalf. (5) The foresaid lord the king considering the premises, by the advice, assent, and authority aforesaid, hath ordained and

There shall be  
but six com-  
mon attornies  
in *Norfolk*,  
six in *Suffolk*,  
and two in  
*Norwich*.

established, That at all times from henceforth there shall be but six common attorneys in the said county of *Norfolk*, and six common attorneys in the said county of *Suffolk*, and two common attorneys in the said city of *Norwich*, to be attorneys in the courts of record, (6) and that all the said fourteen attorneys shall be elected and admitted by the two chief justices of our lord the king for the time being, of the most sufficient and best instructed by their discretions; (7) and that the election and admission of all attorneys, which shall be elected and admitted by the said justices for the time being, above the said number in the said counties, shall be void, and of no authority nor record; (8) and if any person or persons usurp, or presume to be attorney in courts of record in the said counties or city, otherwise than before is specified, and that found by inquisition taken be-

Justices of  
peace shall  
have autho-  
rity to inquire  
of offenders.

fore

fore the justices of peace in the said city or counties (which shall have power, by virtue of this ordinance, to inquire thereof in their sessions) or in any other manner lawfully proved, that then he or they that so presume, if they be lawfully convicted, shall forfeit twenty pounds as often as he or they be so convicted, the one half thereof to be taken to the king's use, and the other half to his use which for the same will sue; The forfeiture of offenders. (9) and he that thereof will sue, shall have an action of debt against any such person which so presumeth to be attorney, (10) and such process for recovery of the same, as lieth in an action of debt at the common law upon an obligation. (11) Provided always, that the said ordinance begin, and first take effect, at the feast of *Easter* next coming, and not before, if the same ordinance seem reasonable to the justices."

**Stat. 3 Jac. cap. 7.** [*A. D. 1605. intituled,*] "An act to reform the multitudes and mildemeanors of attornies and sollicitors at law, and to avoid unnecessary suits and charges in law." 3 Jac. 1. c. 7.

"For that through the abuse of fundry attornies and sollicitors by charging their clients with excessive fees and other unnecessary demands, such as were not, nor ought by them to have been employed or demanded, whereby the subjects grow to be overmuch burthened, and the practice of the just and honest serjeant and counsellor at law greatly slandered: and for that to work the private gain of such attornies and sollicitors, the client is oftentimes extraordinarily delayed: (2) Be it enacted by the authority of this present parliament, That no attorney, solicitor, or servant to any, shall be allowed from his client or master, of or for any fee given to any serjeant or counsellor at law, or of or for any sum or sums of money given for copies to any clerk or clerks, or officers in any court or courts of record at *Westminster*, unless he have a ticket subscribed with the hand and name of the same serjeant or counsellor, clerk or clerks, or officers aforesaid, testifying how much he hath received for his fee, or given or paid for copies, and at what time, and how often: (3) And that all attornies and sollicitors shall give a true bill unto their masters or clients, or their assigns, of all other charges concerning the suits which they have for them, subscribed with his own hand and name, before such time as they or any of them shall charge their clients with any the same fees or charges: (4) And that if the attorney or solicitor do or shall willingly delay his clients suits to work his own gain, or demand by his bill any other sums of money, or allowance upon his account of any money which he hath not laid out or disbursed, that in every such case, the party grieved shall have his action against such attorney or solicitor, and recover therein costs and treble damages, and the said attorney and solicitor shall be discharged from thenceforth from being an attorney or solicitor any more.

An attorney shall have a ticket of the money which he giveth for fees, &c. 1 Salk. 86. Aleyn 4.

A bill of charges. Castnew 57, 147. Rayn. 245.

An attorney delaying his client's suit, or demanding more than is due.

*Sec. 2.* "And to avoid the infinite numbers of sollicitors and attornies, Be it enacted by the authority of this present parliament, That none shall from henceforth be admitted attornies in any the king's courts of record aforesaid, but such as have been brought up in the same courts,

Who only shall be attornies or sollicitors.

No following  
of a suit in  
another's  
name.

or otherwise well practised in soliciting of causes, and have been found by their dealings to be skilful and of honest disposition: (2) And that none to be suffered to solicit any cause or causes in any the courts aforesaid, but only such as are known to be men of sufficient and honest disposition: (3) And that no attorney shall admit any other to follow any suit in his name; upon pain that both the attorney and he that followeth any such suit in his name, shall each of them forfeit for such offence, twenty pound; the one moiety whereof to our sovereign lord the king, his heirs and successors, and the other moiety to the party grieved, to be recovered in any the said courts of record aforesaid, by original writ of debt, bill, plaint, or information, wherein no manner of esloign, wager of law, or protection shall be allowed: And that the attorney in such case shall be excluded from being an attorney for ever thereafter."

2 Geo. 2.  
c. 23.

**Stat. 2 Geo. 2. c. 23.** [*A. D. 1729. intituled,*] "An act for the better regulation of attornies and solicitors."

After 1 Dec.  
1730. no per-  
son to be ad-  
mitted an at-  
torney, unless  
he take the  
oath, and be  
inrolled.

"For the better regulation of attornies and solicitors, practising in any of the courts of law or equity, in that part of *Great Britain* called *England*, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That no person, from and after the first day of *December* one thousand seven hundred and thirty, shall be permitted to act as an attorney, or to sue out any writ or process, or to commence, carry on, or defend, any action or actions, or any other proceedings, either before or after judgment obtained, in the name or names of any other person or persons in his majesty's court of *King's Bench*, *Common Pleas*, or *Exchequer*, or dutchy of *Lancaster*, or in any of his majesty's courts of great sessions in *Wales*, or in any of the courts of the counties palatine of *Chester*, *Lancaster*, and *Durham*, or in any other court of record in that part of *Great Britain* called *England*, wherein attornies have been accustomably admitted, and sworn, unless such person shall take the oath herein after directed and appointed to be taken by attornies, and shall also be admitted and inrolled, on or before the said first day of *December* one thousand seven hundred and thirty, in such of the said courts where he shall act as an attorney, or shall be sworn, admitted, and inrolled, in the said respective courts after the said first day of *December* one thousand seven hundred and thirty, in such manner as is herein after directed.

Judges to ex-  
amine into his  
capacity, be-  
fore admis-  
sion.

**Self. 2.** "And be it further enacted by the authority aforesaid, That the judges of the said courts respectively, or any one or more of them, shall, and they are hereby authorized and required, before they shall admit such person to take the said oath, to examine and inquire, by such ways and means as they shall think proper, touching his fitness and capacity to act as an attorney; and if such judge or judges respectively shall be thereby satisfied, that such person is duly qualified to be admitted to act as an attorney, then, and not otherwise, the said judge or judges of

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the said courts respectively shall, and they are hereby authorized to administer to such person the oath herein after directed to be taken by attorneys, and after such oath taken, to cause him to be admitted an attorney of such court respectively, and his name to be inrolled as an attorney in such court respectively, without any fee or reward, other than one shilling for administering such oath; which admission shall be written on parchment in the *English* tongue, in a common legible hand, and signed by such judge or judges respectively, whereon the lawful stamp shall be first impressed, and shall be delivered to such person so admitted.

*Sett.* 3. “ And be it further enacted by the authority aforesaid, That no person, from and after the first day of *December* in the year of our Lord one thousand seven hundred and thirty, shall be permitted to act as a solicitor, or to sue out any writ or process, or to commence, carry on, solicit, or defend any suit, or any proceedings, in the name of any other person, in any court of equity, either in his majesty’s high court of *Chancery*, court of equity in the *Exchequer* chamber, court of the dutchy chamber of *Lancaster* at *Westminster*, or courts of the counties palatine of *Chester*, *Lancaster*, or *Durham*, or of the great sessions in *Wales*, or in any other inferior court of equity in that part of *Great Britain* called *England*, unless such person shall take the oath herein after directed and appointed to be taken by solicitors, in courts of equity, and shall also be admitted and inrolled on or before the said first day of *December* one thousand seven hundred and thirty, in such of the said courts of equity, where he shall act as a solicitor, or shall be sworn, admitted, and inrolled, after the said first day of *December*, in such manner as is herein after directed.

*Sett.* 4. “ And be it further enacted by the authority aforesaid, That the master of the rolls, or two of the masters of the *Chancery*, the barons of the court of *Exchequer*, the chancellor of the dutchy of *Lancaster*, and the judges of the said other courts of equity for the time being respectively, or any one or more of them, shall, and they are hereby authorized and required, before he or they shall admit any person to take the said oath, to examine and inquire, by such ways and means as he or they shall think proper, touching his fitness and capacity to act as a solicitor in such courts of equity respectively; and if the said master of the rolls, or two masters of the *Chancery*, the barons of the court of *Exchequer*, the chancellor of the dutchy of *Lancaster*, or the judges of the said other courts of equity for the time being, or any one or more of them respectively, shall be thereby satisfied, that such person is duly qualified to be admitted to act as a solicitor in such court of equity; then, and not otherwise, the said master of the rolls, two masters of the *Chancery*, the barons of the court of *Exchequer*, the chancellor of the dutchy of *Lancaster*, and the judges of the said other courts of equity for the time being respectively, or any one or more of them shall, and they are hereby authorized to administer to such person the oath herein after directed to be taken by solicitors, and, after such oath taken, to cause him to be admitted a solicitor in such court of equity, and his name to be inrolled as a solicitor in such court, without any fee or reward, other than one shilling for administering such oath, which admission

None to be permitted to act as a solicitor, unless he take the oath, and be inrolled.

Court of equity to examine solicitors.

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sion shall be written on parchment in *English*, and in a common legible hand, and signed by the master of the rolls, two masters of the chancery, the barons of the exchequer, the chancellor of the dutchy of *Lancaster*, and the judges of the said other courts of equity respectively, or such of them who shall admit such person to be a solicitor, whereon a treble forty shillings stamp shall be first impressed, and shall be delivered to the person so admitted.

*Sett.* 5. “And be it further enacted by the authority aforesaid, That from and after the first day of *December* one thousand seven hundred and thirty, no person, who shall not before the said first day of *December* have been sworn, admitted, and inrolled, pursuant to the directions of this act, shall be permitted to act as an attorney, or to sue out any writ or process, or to commence, carry on, or defend any action or actions, or any proceedings, either before or after judgment obtained, in the name or names of any other person or persons, in any of the courts of law aforesaid, unless such person shall have been bound by contract in writing, to serve as a clerk for and during the space of five years, to an attorney duly and legally sworn and admitted, as herein before is directed, in some or one of the courts herein before mentioned; and that such person, for and during the said term of five years, shall have continued in such service; and also unless such person, after the expiration of the said term of five years, shall be examined, sworn, admitted, and inrolled in the same manner as the persons, who shall be admitted attorneys of the said courts, are herein before required to be examined, sworn, admitted, and inrolled.”

*Judges, before they admit them to take the oath, to examine their fitness.* *Sett.* 6. “And be it further enacted by the authority aforesaid, That the judges of the said courts respectively, or any one or more of them, shall, and they are hereby authorized and required, before they shall admit such person to take the said oath, to examine and enquire, by such ways and means as they shall think proper, touching his fitness and capacity to act as an attorney; and if such judge or judges respectively shall be thereby satisfied, that such person is duly qualified to be admitted to act as an attorney, then, and not otherwise, the said judge or judges of the said courts respectively shall, and they are hereby authorized to administer in open court, to such person, the oath herein after directed to be taken by attorneys, and, after such oath taken, to cause him to be admitted an attorney in such court, and his name to be inrolled as an attorney in such court, without any fee or reward, other than one shilling for administering such oath, which admission shall be written on parchment in the *English* tongue, in a common legible hand, and signed by such judge or judges respectively, whereon the lawful stamps shall be first impressed, and shall be delivered to the person so admitted.”

*After 1 Dec. 1730. none to act as solicitor before he has served a clerkship, and been duly admitted.* *Sett.* 7. “And be it further enacted by the authority aforesaid, That from and after the first day of *December* one thousand seven hundred and thirty, no person, who shall not, before the said first day of *December*, have been sworn, admitted, and inrolled, pursuant to the directions of this act, shall be permitted to act as a solicitor, to sue out any writ or process, or to commence, carry on, solicit, or defend, any suit or proceedings in the name or names of any other person or persons, in any of the courts of equity aforesaid, unless such person shall have been bound by contract in writing

writing to serve as a clerk for and during the space of five years, to a solicitor duly and legally sworn and admitted, as herein before is directed, in some or one of the courts of equity aforesaid, and for and during the said term of five years shall have continued in such service; and also unless such person, after the expiration of the said term of years shall be examined, sworn, admitted, and inrolled, in the same manner, as persons who shall be admitted solicitors in the courts of equity aforesaid, are herein before required to be examined, sworn, admitted, and inrolled."

*Seet. 8.* "And be it further enacted by the authority aforesaid, That the master of the rolls, two masters of the chancery, the barons of the court of exchequer, the chancellor of the duchy of *Lancaster*, and the judges of the said other courts of equity for the time being respectively, or any one or more of them, shall, and they are hereby authorized and required, before he or they shall admit such person to take the said oath, to examine and inquire by such ways and means, as he or they shall think proper, touching his fitness and capacity to act as a solicitor in courts of equity; and if the master of the rolls, two masters of the chancery, the barons of the court of exchequer, the chancellor of the duchy of *Lancaster*, and such judge or judges of the said other courts of equity for the time being respectively, shall be thereby satisfied, that such person is duly qualified to be admitted to act as a solicitor in such court of equity, then and not otherwise, the said master of the rolls, two masters of the chancery, the barons of the court of exchequer, the chancellor of the duchy of *Lancaster*, and the said judges of the said other courts of equity for the time being respectively, or any one or more of them, shall, and they are hereby authorized to administer in open court, to such person, the oath herein after directed to be taken by solicitors, and, after such oath taken, to cause him to be admitted a solicitor in such court of equity, and his name to be inrolled as a solicitor in such court, without any fee or reward, other than one shilling for administering such oath; which admission shall be written on parchment in the *English* tongue, and in a common legible hand, and signed by the master of the rolls, two masters of the chancery, the barons of the exchequer, the chancellor of the duchy of *Lancaster*, and the judges of the said other courts of equity respectively, or such of them who shall admit such person to be a solicitor, whereon a treble forty shillings stamp shall be first impressed, and shall be delivered to the person so admitted."

Judges of the courts of equity to examine solicitors.

*Seet. 9.* "Provided, that this act shall not exclude persons from being admitted, who have *before 25 March, 1729*, been bound for four years."

*Seet. 10.* "Provided also, and it is hereby further enacted, That it may be lawful, from and after the said first day of *December* one thousand seven hundred and thirty, for any person, who shall be sworn, admitted and inrolled to be an attorney in any of the said courts of *King's Bench, Common Pleas Exchequer*, courts of great sessions, counties palatine of *Chester, Lancaster, and Durham*, or who shall be sworn, admitted, and inrolled to be a solicitor in the said court of *Chancery*, court of equity in the exchequer chamber, court of the duchy chamber of *Lancaster at Westminster*, courts of equity of the counties palatine of *Chester, Lancaster, and Durham*, and of the

Attornies or solicitors, with consent of an attorney of another court, may sue out writs, &c. in such court.

the great sessions in *Wales*, or any of them, as herein before is directed, by and with the consent and permission of any attorney in any of the said other courts of record at *Westminster*, courts of the counties palatine of *Chester*, *Lancaster* and *Durham*, courts of exchequer at *Chester*, and courts of the great sessions in *Wales*, such consent being in writing signed by such attorney, and in the name of such attorney, to sue out any writ or process, or to commence, carry on, prosecute, or defend any action or actions, or any other proceedings in such court, notwithstanding such person is not sworn, or admitted to be an attorney of such court; any law or statute to the contrary notwithstanding.

Judges not to swear a greater number of attornies than formerly allowed.

*Seet. 11.* " Provided likewise, and it is hereby further enacted and declared, That nothing in this act contained shall extend either to require or authorize any judge or judges of any court of record to swear, admit, or inroll, any more or greater number of persons to be attornies of such court, than by the ancient usage and custom of such court hath been heretofore allowed.

Clerks on the death of their matters, &c. may be turned over.

*Seet. 12.* " Provided also, and it is hereby further enacted, That if any attorney or solicitor, with and to whom any person hath been or shall be bound by contract in writing, as aforesaid, to serve as a clerk for the term of five years, or four years respectively, shall happen to die before the expiration of the said five years, or four years, or if such contract shall, by mutual consent of the parties, be vacated, or in case such clerk be legally discharged by any rule or order of the court, wherein such attorney or solicitor shall practise, before the expiration of the said five years, or four years, then, and in any of the said cases, if such clerk shall, by contract in writing, be obliged to serve, and shall accordingly serve as a clerk to any other attorney or solicitor respectively, who shall be sworn, admitted, and inrolled, as before directed, during the residue of the said term of five years, or four years, respectively, then such service shall be deemed and taken to be as good and effectual, as if such clerk had continued to serve as a clerk for the term of five years, or four years, to the same person, to whom he was originally bound by contract in writing, as aforesaid.

Attornies before admission to take the following oath.

*Seet. 13.* " And it is hereby further enacted by the authority aforesaid, That every person who shall, pursuant to this act, be admitted and inrolled to be an attorney in the said courts of *King's Bench*, *Common Pleas*, *Exchequer*, great sessions in *Wales*, counties palatine of *Chester* *Lancaster*, and *Durham*, or any inferior courts of record, wherein attornies have been accustomedly admitted, and sworn, shall, before he is admitted and inrolled, as aforesaid, take and subscribe the oath following, instead of the oath heretofore usually taken by the attornies of such courts respectively.

**I** A. B. do swear, That I will truly and honestly demean my self in the practice of an attorney, according to the best of my knowledge and ability.

So help me God.

*Seet.*

*Seet. 14.* “ And it is hereby further enacted by the authority aforesaid, That every person who shall, pursuant to this act, be admitted and inrolled to be a solicitor in the said high court of chancery, or in any of the other courts of equity aforesaid, shall, before he shall be so admitted and inrolled, take and subscribe the oath following; *viz.* Solicitors to take the oath following.

**I** A. B. do swear, that I will truly and honestly demean my self in the practice of a solicitor, according to the best of my knowledge and ability.

So help me God.

*Seet. 15.* “ And be it further enacted by the authority aforesaid, That from and after the first day of *July* in the year of our Lord one thousand seven hundred and twenty-nine, no attorney or solicitor shall have more than two clerks at one and the same time, who shall become bound by contract in writing as aforesaid, after the said first day of *July*, to serve him as clerks. No attorney to have more than two clerks at one time.

*Seet. 16.* “ And it is hereby further enacted and declared, That it shall and may be lawful to and for the several prothonotaries of the court of common pleas at *Westminster*, and the secondary of the court of *King's Bench*, and the several prothonotaries of the respective courts of the counties palatine of *Chester*, *Lancaster*, and *Durham*, and the respective courts of great sessions in *Wales*, to have three clerks at one and the same time, and no more; and that such respective clerks, having served a clerkship to any of the said prothonotaries, or secondary, for any term not less than five years, may, after the expiration of such term of five years, be examined, admitted, and inrolled, to be an attorney of any of the courts of law aforesaid, and for the same fee, and in the same manner, as any other person may be admitted and inrolled, who shall serve a clerkship to any sworn attorney for the space of five years, in case the judge or judges of the court, before whom such clerk shall be examined, be upon such examination satisfied, that he is duly qualified to be admitted an attorney of such court; any thing in this act contained to the contrary notwithstanding.” Prothonotaries or secondary of Com. Pleas, &c. to have three clerks.

*Seet. 17.* “ And it is hereby also further enacted by the authority aforesaid, That from and after the said first day of *December* one thousand seven hundred and thirty, if any person, who shall be a sworn attorney of any of the courts of law aforesaid, shall knowingly and willingly permit or suffer any other person or persons to sue out any writ or process, or to commence, prosecute, follow, or defend any action or actions, or other proceedings in his name, not being a sworn attorney of one of the said other courts of law, or a sworn solicitor of the said court of chancery, or of some or one of the courts of equity aforesaid, and shall be thereof lawfully convicted, every person so convicted shall, from the time of such conviction, be disabled and made incapable to act as an attorney in any of the courts of law aforesaid, and the admittance of such person to be an attorney of any of the said courts of law shall from thenceforth cease and be void. After 1 Decem. 1730. sworn attorneys, permitting those that are not to issue out writs, disabled from practice.

After 1 June  
1729. attor-  
neys and soli-  
citors to be in-  
rolled in the  
proper courts.

*Sett.* 18. " And be it enacted by the authority aforesaid, That from and after the first day of *June* one thousand seven hundred and twenty-nine, the chief clerk of the court of *King's Bench*, or his deputy, the clerk of the warrants in the court of common pleas, or his deputy, the prothonotaries of the said respective counties palatine of *Lancaster*, *Chester*, and *Durham*, and of the great sessions in *Wales*, or their respective deputies, and such officers of the said inferior courts of law, as the judge or judges of the said inferior courts respectively shall for that purpose appoint, shall, and they are hereby respectively required from time to time, without fee or reward, to inroll the name of every person, who shall be admitted an attorney in the said respective courts of law, pursuant to the directions in this act, and the time when admitted, in an alphabetical order, in rolls or books to be provided and kept for that purpose in the said several and respective offices; and also that the senior clerk of the petty bag office in the court of chancery; or his deputy, the king's remembrancer of the court of exchequer, or his deputy, the chief clerk of the court of the dutchy chamber of *Lancaster*, or his deputy, the registers of the respective courts of equity in the said counties palatine, and of the great sessions of *Wales*, or their respective deputies, and such officers of the inferior courts of equity, as the judge or judges of such inferior courts respectively shall for that purpose appoint, shall, and they are hereby respectively required from time to time, without fee or reward, to enroll the name of every person who shall be admitted a solicitor in the said respective courts of equity, pursuant to the directions in this act, and the time when admitted, in an alphabetical order, in rolls or books to be kept for that purpose in the said respective offices in the said courts of equity; to which rolls or books in the said courts of law and equity respectively all persons shall and may have free access without fee or reward.

Attorneys to  
be admitted  
without stamp,  
if sworn before  
1 June 1729.

*Sett.* 19. " Provided always, and it is hereby enacted, That the admission of any attorney in any of the courts aforesaid, pursuant to the directions in this act, shall and may be written on parchment without any stamp impressed thereupon, in case he hath at any time, on or before the first day of *June* one thousand seven hundred and twenty-nine, been sworn and admitted an attorney of any of the said courts.

A sworn attor-  
ney may be  
admitted a  
solicitor.

*Sett.* 20. " Provided also, and it is hereby further enacted, That from and after the first day of *December* one thousand seven hundred and thirty, any person, who shall be sworn, admitted and inrolled to be an attorney, in any of the said courts of *King's Bench*, *Common Pleas*, *Exchequer*, counties palatine of *Chester*, *Lancaster*, and *Durham*, and great sessions in *Wales*, as herein before directed, may be sworn, admitted, and inrolled to be a solicitor in all or any of the courts of equity aforesaid, without any fee for the oath, or any stamp to be impressed on the parchment whereon such admission shall be written, if the master of the rolls, two masters of the chancery, the barons of the court of exchequer, the chancellor of the dutchy of *Lancaster*, and the judges of the said other courts of equity for the time being, or any of them respectively, shall, upon examining such attorney touching his fitness

fitness and capacity to act as a solicitor in courts of equity, be satisfied that such attorney is duly qualified to be so admitted.

*Stat. 21.* " Provided also, and it is hereby further enacted, That from and after the first day of *December* one thousand seven hundred and thirty, any person, who shall be sworn, admitted, and inrolled to be a solicitor in any of the said courts of chancery, exchequer, dutchy of *Lancaster*, counties palatine of *Chester*, *Lancaster*, and *Durham*, and great sessions in *Wales*, as herein before directed, shall and may be sworn, admitted, and inrolled to be a solicitor in all or any of the said other courts of equity, or in any inferior court of equity, without any fee for the oath, or any stamps to be impressed on the parchment whereon such admission shall be written, in case the master of the rolls, two masters of the chancery, the barons of the court of exchequer, the chancellor of the dutchy of *Lancaster*, and the judges of the said other courts of equity for the time being, or any of them respectively, shall, upon examining such person touching his fitness and capacity to act as a solicitor in courts of equity, be satisfied that such person is duly qualified to be so admitted.

A sworn solicitor in one court of equity, may be admitted into any other court.

*Stat. 22.* " And be it further enacted by the authority aforesaid, That from and after the first day of *July* one thousand seven hundred and twenty-nine, every writ and process for arresting the body, and every writ of execution, or some label annexed to such writ, or process, and every warrant, that shall be made out upon any such writ, process, or execution, shall, before the service or execution thereof, be subscribed or indorsed with the name of the attorney, clerk in court, or solicitor, written in a common legible hand, by whom such writ, process, execution or warrant respectively shall be sued forth; and where such attorney, clerk in court, or solicitor, shall not be the person immediately retained or employed by the plaintiff, in the action or suit, then also with the name of the attorney or solicitor so immediately retained or employed, to be subscribed, or, indorsed and written in like manner; and that every copy of any writ or process, that shall be served upon any defendant, shall, before the service thereof, be in like manner subscribed, or indorsed, with the name of the attorney or solicitor, who shall be immediately retained or employed by the plaintiff in such writ or process.

The name of the attorney to be written on every writ, &c.

*Stat. 23.* " And be it further enacted by the authority aforesaid, That from and after the first day of *July* one thousand seven hundred and twenty-nine, no attorney or solicitor of any of the courts aforesaid, shall commence or maintain any action or suit for the recovery of any fees, charges, or disbursements, at law or in equity, until the expiration of one month, or more, after such attorney or solicitor respectively shall have delivered unto the party or parties to be charged therewith, or left for him, her, or them, at his, her, or their dwelling-house, or last place of abode, a bill of such fees, charges, and disbursements, written in a common legible hand, and in the *English* tongue (except law terms, and names of writs) and in words at length (except times and sums) which bill shall be subscribed with the proper hand of such attorney or solicitor respectively; and upon application of the party or parties chargeable by such bill, or of any other

Attorney, &c. not to commence an action for fees till one month after the delivery of their bills.

Judges, &c. to  
refer bills to be  
taxed, without  
money being  
brought into  
court, &c.

person in that behalf authorized, unto the said lord high chancellor, or the master of the rolls, or unto any of the courts aforesaid, or unto a judge, or baron of any of the said courts respectively, in which the business contained in such bill, or the greatest part thereof, in amount or value, shall have been transacted; and upon the submission of the said party or parties, or such other person authorized as aforesaid, to pay the whole sum, that, upon taxation of the said bill, shall appear to be due to the said attorney or solicitor respectively, it shall and may be lawful for the said lord high chancellor, the said master of the rolls, or for any of the courts aforesaid, or for any judge or baron of any of the said courts respectively, and they are hereby required to refer the said bill, and the said attorney's or solicitor's demand thereupon (although no action or suit shall be then depending in such court touching the same) to be taxed and settled by the proper officer of such court, without any money being brought into the said court for that purpose; and if the said attorney, or solicitor, or the party or parties chargeable by such bill respectively, having due notice, shall refuse or neglect to attend such taxation, the said officer may proceed to tax the said bill *ex parte* (pending which reference and taxation no action shall be commenced or prosecuted touching the said demand), and, upon the taxation and settlement of such bill and demand, the said party or parties shall forthwith pay to the said attorney or solicitor respectively, or to any person by him authorized to receive the same, that shall be present at the said taxation, or otherwise unto such other person or persons, or in such manner as the respective court aforesaid shall direct, the whole sum that shall be found to be or remain due thereon, which payment shall be a full discharge of the said bill and demand; and in default thereof the said party or parties shall be liable to an attachment or process of contempt, or to such other proceedings, at the election of the said attorney or solicitor, as such party or parties was or were before liable unto; and if, upon the said taxation and settlement, it shall be found that such attorney or solicitor shall happen to have been overpaid, then in such case the said attorney or solicitor respectively shall forthwith refund and pay unto the party or parties intitled thereunto, or to any person by him, her, or them authorized to receive the same, if present at the settling thereof, or otherwise unto such other person or persons, in such manner as the respective court aforesaid shall direct, all such money as the said officer shall certify to have been so overpaid; and in default thereof the said attorney or solicitor respectively shall in like manner be liable to an attachment, or process of contempt, or to such other proceedings, at the election of the said party or parties, as he would have been subject unto, if this act had not been made; and the said respective courts are hereby authorized to award the costs of such taxations to be paid by the parties, according to the event of the taxation of the bill, (that is to say) if the bill taxed be less by a sixth part than the bill delivered, then the attorney or solicitor is to pay the costs of the taxation; but if it shall not be less, the court in their discretion shall charge the attorney or client, in regard to the reasonableness or unreasonableness of such bills.

Sett.

*Señ. 24.* " And be it further enacted, That from and after the first day of December one thousand seven hundred and thirty, in case any person shall, in his own name, or in the name of any other person, sue out any writ or process, or commence, prosecute or defend any action or suit, or any proceedings, in any of the courts of law or equity aforesaid, as an attorney or solicitor, for or in expectation of any gain, fee or reward, without being admitted and inrolled as aforesaid, every such person, for every such offence, shall forfeit and pay fifty pounds to the use of such person, who shall prosecute him for the said offence, and is hereby made incapable to maintain or prosecute any action or suit in any court of law or equity, for any fee, reward, or disbursements, on account of prosecuting, carrying on, or defending any such action, suit, or proceeding.

*Señ. 25.* " And be it further enacted by the authority aforesaid, That the penalties and forfeitures, incurred by any person offending against this act, may be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, or in any of the courts of record of and for the counties palatine of *Chester*, *Lancaster*, and *Durham*, or in any of the courts of great sessions in *Wales*, for offences committed within the jurisdictions of such courts respectively, or at the assizes, or general quarter sessions of the peace of the county, riding, or division, where such offence shall be committed, by any person who shall sue for the same within twelve months after such offence committed, together with treble costs of suit, wherein no essoin, protection, or wager of law shall be allowed, or any more than one imparlance; and that no such bill, plaint, suit, or information, nor any proceedings thereupon, shall be removed before judgment, or stayed by any writ of *certiorari*, *habeas corpus*, or other writ whatsoever.

*Señ. 26.* " Provided nevertheless, and it is hereby further enacted by the authority aforesaid, That nothing in this act contained shall extend, be construed to extend, to the examination, swearing, admission, or inrollment of the six clerks of the court of *Chancery*, or the sworn clerks in their office, or the waiting clerks belonging to the said six clerks, or the cursitors of the said court, or of the clerks of the petty bag office, or of the clerks of the king's coroner, and attorney in the court of *King's Bench*, or of the filazers of the same court, or of the filazers of the court of *Common Pleas* at *Westminster*, or of the attorneys of the court of the dutchy chamber of *Lancaster*, or of the attorneys of the court of *Exchequer* at *Chester*, or of the attorneys of the courts of the lord mayor and sheriffs of *London* respectively for the time being; but that the said clerk, filazers, and attorneys respectively, shall and may be examined, sworn, admitted, inrolled, and practise, in their respective courts and offices aforesaid, in like manner as they might have been, or done, before the making this act.

*Señ. 27.* " Provided also, and it is hereby further declared and enacted by the authority aforesaid, That nothing in this act contained shall extend, be construed to extend to the examination, swearing, admission, or inrollment of the attorneys or clerks of the office of the king's remembrancer, treasurer's remembrancer, pipe, or office of pleas in the court of *Exchequer* at *Westminster*, for the time being; but that the said attorneys and clerks of the said re-

spec-



spective offices shall and may be approved, sworn, admitted, and practise, in the said court of *Exchequer*, or may practise in any other of the courts of record before mentioned, in the name, and with the consent of some sworn attorney of such court; such consent to be in writing, and signed by such attorney, as aforesaid, in like manner as they have usually been, and might have done, before the making of this act; any thing herein contained to the contrary in any wise notwithstanding; and that it shall and may be lawful, from and after the said first day<sup>2</sup> of *December* one thousand seven hundred and thirty, for any person, who shall be sworn, admitted, and inrolled an attorney or solicitor in any of the several courts before mentioned, according to the direction of this act, to practise and solicit in the said respective offices, in the same manner as heretofore has been done; any thing herein before contained, or any law or statute to the contrary notwithstanding.

as also the solicitors of the Treasury, &c.

*Seet.* 28. " Provided also, that this act, or any thing herein contained, shall not extend, or be construed to extend, to the examination, swearing, admission, or inrollment, of persons to be solicitors of the treasury, customs, excise, post-office, salt or stamp duties, or of any other branches of his majesty's revenue for the time being, or of the solicitor of the city of *London* for the time being, or of the assistant to the council for the affairs of the admiralty and navy; but that such solicitors and assistant may be examined, sworn, admitted, and practise, in their respective offices only, as they might have done before the making this act.

Continuation of the act.

*Seet.* 29. " Provided always, and be it enacted by the authority aforesaid, That this act shall continue in force from the said first day of *June* one thousand seven hundred and twenty-nine, for the term of nine years, and from thence unto the end of the then next session of parliament, and no longer." [Continued by 12 *Geo.* 2. c. 13. and amended and continued by 22 *Geo.* 2. c. 46. until 1 *June* 1757, and to the end of the next session.—Made perpetual by 30 *Geo.* 2. c. 19. *seet.* 75.]

5 *Geo.* 2. c. 18.

**Stat.** 5 *Geo.* 2. c. 18. [*A. D.* 1732. intituled,] " An act for the further qualification of justices of the peace."

No person to be justices who have not 100*l.* a year clear of incumbrances.

*Seet.* 1. " Whereas the constituting persons of mean estates to be justices of the peace may be highly prejudicial to the public welfare, Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fifth day of *March* one thousand seven hundred and thirty-three, no person shall be capable to be a justice of the peace, or to act as a justice of the peace, for any county within that part of *Great Britain* called *England*, or the principality of *Wales*, who shall not have an estate of freehold or copyhold to and for his own use and benefit, in possession for life, or for some greater estate, either in law or equity, or an estate for years, determinable upon one or more life or lives, or for a certain term originally created for one and twenty years, or more, in lands, tenements, or hereditaments, lying in that part of *Great Britain* called *England*,

and, or principality of *Wales*, of the clear yearly value of one hundred pounds, over and above what will satisfy and discharge all incumbrances that may affect the same.

*Señ. 2.* “ And be it further enacted by the authority aforesaid, That no attorney, solicitor, or proctor, in any court whatsoever, shall, from and after the said twenty-fifth day of *March* one thousand seven hundred and thirty-three, be capable to continue or be a justice of the peace, within any county for that part of *Great Britain* called *England*, or the principality of *Wales*, during such time as he shall continue in the business and practice of an attorney, solicitor, or proctor. Attornies, solici-  
citors, and  
proctors inca-  
pacitated.

*Señ. 3.* “ And be it further enacted by the authority aforesaid, That if any person, who shall not be qualified according to the directions of this act, shall, after the said twenty-fifth day of *March* one thousand seven hundred and thirty-three, accept or take upon himself the office of a justice of the peace, or shall do any act as such, the person so offending shall, for every such offence, forfeit and pay the sum of one hundred pounds; one moiety whereof shall be to the king’s majesty, his heirs, and successors, and the other moiety to such person or persons as will sue for the same by action of debt, bill, plaint, or information, in any of his majesty’s courts of record at *Westminster*, in which no essoign, protection, wager of law, or more than one imparlance shall be allowed. Persons acting  
as justices, not  
so qualified, to  
forfeit 100*l*.

*Señ. 4.* “ Provided always, that this act, or any thing herein contained, shall not extend, or be construed to extend, to any city or town, being a county of it self, or to any other city, town, cinque port, or liberty, having justices of the peace within their respective limits and precincts by charter, commission, or otherwise; but that in every such city, town, liberty, and place, such persons may be capable to be justices of the peace, and in such manner only, as they might have been, if this act had never been made; any thing herein before contained to the contrary thereof in any wise notwithstanding. Not to extend  
to cities which  
are counties,  
or other places  
having justices  
by charter,

*Señ. 5.* “ Provided always, that nothing in this act contained shall extend to incapacitate any peer or lord of parliament, or the eldest son or heir apparent of any peer or lord of parliament, or of any person qualified to serve as knight of a shire by an act, intituled, an act to secure the freedom of parliaments, by the further qualifying members to sit in the house of commons, to be a justice of the peace for any county, or to act as such; any thing herein contained to the contrary thereof in any wise notwithstanding. nor to the  
eldest sons of  
peers, or of  
knights of  
shires,  
9 Annæ, c. 5.

*Señ. 6.* “ Provided also, that nothing in this act contained shall extend, or be construed to extend to incapacitate or exclude the officers of the board of green cloth from being justices of the peace within the virge of his majesty’s palaces, or to incapacitate or exclude the commissioners and principal officers of the navy, or the two under secretaries in each of the offices of principal secretary of state, from being justices of the peace in and officers of the for such maritime counties and places, where they usually have been justices of the peace; any thing herein contained to the contrary in any wise notwithstanding. board of  
Green Cloth,  
or principal  
officers of the  
navy,

*Señ.*

nor to heads of colleges in either university.

*Señ. 7.* "Provided always, that this act, nor any thing herein contained, shall extend, or be construed to extend to any of the heads of colleges or halls in either of the two universities of *Oxford* and *Cambridge*, but that they may be made justices of the peace of and in the several counties of *Oxford*, *Berks*, and *Cambridge*, and the cities and towns within the same, and execute the office thereof as fully and freely in all respects, as heretofore they have lawfully used to execute the same, as if this act had never been made; any thing herein before contained to the contrary notwithstanding."

6 Geo. 2. c. 27.

**Stat.** 6 Geo. 2. c. 27. [*A. D.* 1733. intituled,] "An act to explain and amend an act made in the second year of his majesty's reign, intituled, *an act for the better regulation of attornies and solicitors.*"

*Sect. 1.* *Persons qualified as mentioned in the act may, on or before the last day of Michaelmas term 1733, be sworn, admitted and inrolled attornies in the several courts.*

*Sect. 2.* "And be it further enacted by the authority aforesaid, That any person who hath been, by virtue of the said act, [*viz.* 2 Geo. 2. c. 23.] admitted an attorney in any of his majesty's courts of record at *Westminster*, shall and may be capable of being admitted to practise as an attorney in any inferior court of record, provided such person be in all other respects capable and qualified to be admitted an attorney according to the usage and custom of such inferior court."

12 Geo. 2. c. 13.

**Stat.** 12 Geo. 2. c. 13. [*A. D.* 1739.] Made among other purposes, "for explaining, and amending the act made in the 2 Geo. 2. for the better regulation of attornies and solicitors."

The not indorsing the attorney's name on warrants upon writs, not to vitiate the same.

*Sect. 4.* "And be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of *June* in the year of our Lord one thousand seven hundred and thirty-nine, the not subscribing or indorsing the name of the attorney's clerk in court, or solicitor, on any warrant that shall be made out upon any writ, process or execution, shall not vitiate the same; but such writ, process, and execution, and all proceedings thereon, shall be as valid and effectual, notwithstanding such omission, as if the said recited act for regulating attornies and solicitors had not been made; provided the writ whereon such warrant is made out be regularly subscribed or indorsed according to the said act; and every sheriff or sheriffs, or other officer, who shall make out any warrant upon any writ, process, or execution, and shall not subscribe or indorse the name of the attorney, clerk in court, or solicitor, who sued out the same, shall forfeit the sum of five pounds, to be assessed as a fine upon such sheriff or sheriffs, or other officer, by the court out of which such writ, process, or execution shall issue; one moiety thereof to be paid to his majesty, his heirs and successors, and the other moiety to the person or persons aggrieved by such omission.

Officers to indorse the attornies names upon writs.

*Señ.*

*Seet. 5.* “ And be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of *June* one thousand seven hundred and thirty-nine, it shall and may be lawful to and for every attorney, clerk in court, and solicitor, to write his bill of fees, charges, and disbursements, with such abbreviations as are now commonly used in the *English* language; any thing in any former law to the contrary notwithstanding. Attornies, &c. may use abbreviations in their bills.

*Seet. 6.* “ And be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June* one thousand seven hundred and thirty-nine, the said act of the second year of his present majesty, for the better regulation of attornies and solicitors, or any clause, matter, or thing therein contained, shall, not extend to any bill of fees, charges, and disbursements that are now, or shall hereafter become, due from any attorney or solicitor to any other attorney or solicitor, or clerk in court, but that every such attorney, solicitor, or clerk in court, may use such remedies for the recovery of his fees, charges, and disbursements against such other attorney or solicitor, as he might have done before the making of the said act. Act 2 Geo. II. not to extend to any bill of fees between one solicitor and another.

*Seet. 7.* “ And be it further enacted, That in case any person shall, from and after the said twenty-fourth day of *June* one thousand seven hundred and thirty-nine, commence or defend any action, or sue out any writ, process, or summons, or carry on any proceedings in the court commonly called *The county court*, holden in any county in that part of *Great Britain* called *England*, who is not or shall not then be legally admitted an attorney or solicitor, according to the said act made in the said second year of the reign of his present majesty, that such person shall for every such offence forfeit the sum of twenty pounds, to be recovered with costs by any other person who shall sue for the same, within twelve months next after such offence shall be committed, in any of his majesty's courts of record. Penalty on persons unqualified acting in county courts.

*Seet. 8.* “ And be it enacted by the authority aforesaid, That any person being one of the people called *Quakers*, who may have served, or shall hereafter serve, a clerkship with an attorney or solicitor, and shall be qualified as by the said act before is required, shall, upon taking his solemn affirmation instead of the oaths thereby directed to be taken, before such judges and others, who are hereby authorized and required to administer the said affirmation, be admitted and inrolled as an attorney or solicitor, as if he had taken the said oaths; any thing in the said act to the contrary notwithstanding. Quakers to be inrolled upon their affirmation.

*Seet. 9.* “ And be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of *June* one thousand seven hundred and thirty-nine, no attorney or solicitor, who shall be a prisoner in any gaol or prison, or within the limits, rules, or liberties of any gaol or prison, shall during his confinement in any gaol or prison, or within the limits, rules, or liberties of any gaol or prison, in his own name, or in the name of any other attorney or solicitor, sue out any writ or process, or commence or prosecute any action or suit in any courts of law or equity; and that all proceedings in such actions or suits shall be void and of none effect; and such attorney or solicitor No attornies, &c. to commence suits, if prisoners.

citor so commencing or prosecuting any action or suit as aforesaid, shall be struck off the roll, and incapacitated from acting as an attorney or solicitor for the future; and any attorney or solicitor permitting or empowering any such attorney or solicitor as aforesaid, to commence or prosecute any action or suit in his name, shall be struck off the roll, and incapacitated from acting as an attorney or solicitor for the future.

Proviso.

*Sett.* 10. "Provided nevertheless, and be it hereby further enacted by the authority aforesaid, That nothing in this act contained shall extend, or be construed to extend, to prevent any attorney or solicitor so confined as aforesaid, from carrying on or transacting any suit or suits commenced before the confinement of such attorney or solicitor as aforesaid; any thing in this act contained to the contrary notwithstanding."

**Stat.** 22 *Geo.* 2. c. 46. [*A. D.* 1749.] Made among other purposes, "for making further regulations with respect to attornies and solicitors."

*Sett.* 3. "And for the better preventing unqualified persons from being admitted attornies and solicitors, and for rendering the said act (*viz.* 2 *Geo.* 2. c. 23.) more effectual for the purposes thereby intended; Be it enacted by the authority aforesaid, That every person who shall, from and after the first day of *July* one thousand seven hundred and forty-nine, be bound by contract in writing to serve as a clerk to any attorney or solicitor, as by the said act is directed, shall, within three months next after the date of every such contract, cause an affidavit to be made and duly sworn of the actual execution of every such contract, by every such attorney or solicitor, and the person so to be bound to serve as a clerk as aforesaid; and in every such affidavit shall be specified the names of every such attorney and solicitor, and of every such person so bound, and their places of abode respectively, together with the day of the date of such contract: and every affidavit shall be filed within the time aforesaid, in the court where the attorney or solicitor, to whom every such person respectively shall be bound as aforesaid, hath been inrolled as an attorney or solicitor, with the respective officer or officers, or his or their respective deputy or deputies, in the respective courts herein after-mentioned, who shall make and sign a memorandum or mark of the day of filing every such affidavit at the back or at the bottom thereof.

Persons bound to serve as clerks to attornies, to cause affidavit to be made within three months of the execution of such contracts, &c.

Affidavit to be filed.

None to be admitted before such affidavit be produced.

Officers who are to file such affidavits.

*Sett.* 4. "And be it further enacted, That no person, who shall after the said first day of *July* become bound as aforesaid, shall be admitted or inrolled an attorney or solicitor in any court in the said act mentioned, before such affidavit, so marked by the proper officer as aforesaid, shall be produced and openly read in such court, where such person shall be admitted and inrolled an attorney or solicitor.

*Sett.* 5. "And it is hereby enacted and declared, That the several persons following shall be deemed and taken to be the proper officers for filing such affidavits in the respective courts herein after-mentioned (that is to say) in the high court of *Chancery*, the senior clerk of the petty bag office, or his deputy; in the court of *King's Bench*, the chief clerk of that court, or his deputy; in the court of *Common Pleas*, the clerk of the warrants of that

that court, or his deputy; in the court of *Exchequer*, the king's remembrancer of that court, or his deputy; in the court of the dutchy chamber of *Lancaster* at *Westminster*, the chief clerk of that court, or his deputy; and in the several counties palatine of *Chester*, *Lancaster*, and *Durham*, the respective prothonotaries of the said counties palatine, and their respective deputies; and in the several courts of the great sessions of *Wales*, the respective prothonotaries of the said courts, and their respective deputies.

*Sett.* 6. " And be it further enacted, That every such officer or officers, or their respective deputy or deputies, filing such affidavit as aforesaid, shall keep a book, wherein shall be entered the substance of such affidavit, specifying the names and places of abode of every such attorney or solicitor, and clerk or person bound as aforesaid, and of the person making such affidavit, with the date of the articles or contract in such affidavit to be mentioned, and the days of swearing and filing every such affidavit respectively; and every such officer or officers, or his or their deputy or deputies, shall be at liberty to take, at the time of filing every such affidavit, the sum of two shillings and six-pence, and no more, as a recompence for his trouble in filing such affidavits, and preparing and keeping such books as aforesaid, and which said books shall and may be searched in office hours, by any person or persons whatsoever, without fee or reward.

Book to be kept for entering the names and places of abode of every such attorney, and clerk, &c.

Fees for filing the affidavits.

*Sett.* 7. " And be it further enacted, That, from and after the said first day of *July*, no attorney or solicitor shall take, have, or retain any clerk, who shall become bound by contract in writing as aforesaid, after such attorney or solicitor shall have discontinued or left off, or during such time as he shall not actually practise as, or carry on the business of an attorney or solicitor.

No attorney to take, &c. a clerk, after discontinuing business.

*Sett.* 8. " And be it further enacted, That every person who shall, from and after the said first day of *July*, become bound, by contract in writing, to serve any attorney or solicitor, as by the said act is directed, shall, during the whole time and term of service, to be specified in such contract, continue and be actually employed by such attorney or solicitor, or his or their agent or agents, in the proper business, practice, or employment of an attorney or solicitor.

Clerks to be employed in their proper business during the time of their contract.

*Sett.* 9. " Provided always, and it is hereby enacted, If any such attorney or solicitor, to or with whom any such person shall be so bound, shall happen to die before the expiration of such term, or shall discontinue or leave off such his practice as aforesaid, or if such contract shall by mutual consent of the parties be cancelled, or in case such clerk shall be legally discharged by any rule or order of the court, wherein such attorney or solicitor shall practise, before the expiration of such term, and such clerk shall in any of the said cases be bound by another contract, or other contracts, in writing to serve, and shall accordingly serve in manner herein before-mentioned, as clerk to any other such practising attorney or attorneys, solicitor or solicitors as aforesaid respectively, during the residue of the said term of five years; then such service shall be deemed and taken to be as good, effectual, and available, as if such clerk had continued to

Affidavit of the execution of second contracts by such clerks, the service of 5 years to be deemed effectual.

serve as a clerk for the said term, to the same person to whom he was originally bound, so as an affidavit be duly made and filed of the execution of such second or other contract or contracts, within the time, and in like manner, as is before directed concerning such original contract.

Clerks, before admitted, to make affidavit of having served 5 years.

*Seet. 10.* " And be it further enacted, that every person who, from and after the said first day of *July*, shall become bound as a clerk as aforesaid, shall, before he be admitted an attorney or solicitor according to the said act, cause an affidavit of himself, or such attorney or solicitor, to whom he was bound as aforesaid, to be duly made and filed with the proper officer herein before for that purpose appointed, that he hath actually and really served and been employed by such practising attorney or attorneys, solicitor or solicitors, to whom he was bound as aforesaid, or his or their agent or agents, during the said whole term of five years, according to the true intent and meaning of this act.

Sworn attorneys acting as agents for persons not qualified, &c.

*Seet. 11.* " And whereas divers persons, who are not examined, sworn, or admitted to act as attorneys or solicitors in any court of law or equity, do, in conjunction with, or by the assistance or connivance of certain sworn attorneys and solicitors, and by various subtle contrivances, intrude themselves into, and act and practise in the office and business of attorneys and solicitors, to the great prejudice and loss of many of his majesty's subjects, and the scandal of the profession of the law; Be it therefore enacted, That from and after the twenty-ninth day of *September*, which shall be in the year of our lord one thousand seven hundred and forty-nine, if any sworn attorney or solicitor shall act as agent for any person or persons, not duly qualified to act as an attorney or solicitor as aforesaid, or permit or suffer his name to be any ways made use of upon the account, or for the profit of any unqualified person or persons, or send any process to such unqualified person or persons, thereby to enable him or them to appear, act, or practise in any respect as an attorney or solicitor, knowing him not to be duly qualified as aforesaid, and complaint shall be made thereof in a summary way to the court from whence any such process did issue, and proof made thereof, upon oath, to the satisfaction of the court, that such sworn attorney or solicitor hath offended therein as aforesaid; then, and in such case, every such attorney or solicitor so offending shall be struck off the roll, and for ever after disabled from practising as an attorney or solicitor; and in that case, and upon such complaint and proof made as aforesaid, it shall and may be lawful to and for the said court to commit such unqualified person, so acting or practising as aforesaid, to the prison of the said court, for any time not exceeding one year.

to be struck off the roll, and to be committed.

None to act as attorneys at the

*Seet. 12.* " And whereas frequent delays, inconveniencies, and unnecessary expences arise and happen, as well to parishes as private persons, by the mismanagement and unskilfulness of persons employed as solicitors or agents at the sessions held for the several counties, ridings, divisions, cities, towns corporate, and other places of this kingdom, who having never been regularly bred to the law, and being ignorant of the forms and operations thereof, offenders against the laws of the land have frequently escaped with impunity: For remedying therefore of these inconveniencies,

Be

Be it enacted by the authority aforesaid, That from and after the twenty-ninth day of *September*, which shall be in the year of our lord one thousand seven hundred and forty-nine, no person whatsoever shall act as a solicitor, attorney, or agent, or sue out any process, at any general or quarter sessions of the peace for any county, riding, division, city, town corporate, or other place within this kingdom, either with respect to matters of a criminal or civil nature, unless such person shall have been heretofore admitted an attorney of one of his majesty's courts of record at *Westminster*, and duly inrolled pursuant to an act made in the second year of his present majesty's reign (intituled, An act for the better regulation of attornies and solicitors), or unless such person shall hereafter be admitted an attorney, and inrolled as aforesaid by virtue of this act, or such other law as shall be then in being, and unless such person shall continue so entered upon the roll, at the time of such his acting in the capacity aforesaid; but all and every person or persons respectively, who shall so act, not being admitted and inrolled as aforesaid, shall be subject and liable to a penalty of fifty pounds; to be recovered by action of debt, bill, plaint, or information, in any of the courts of record at *Westminster*, by any person or persons who shall sue for the same, within twelve months after the offence committed, with treble costs of suit; and if any attorney or attornies shall permit and suffer any person or persons whatsoever, not being admitted and inrolled as aforesaid, to make use of his or their name or names respectively, in the courts of general or quarter sessions aforesaid, such attorney or attornies respectively shall be subject and liable to a like penalty of fifty pounds, to be recovered in manner aforesaid.

essions who  
were not at ad-  
mitted ac-  
cording to  
2 Geo. II. c.  
23.

Penalty 50 l.  
with treble  
costs.  
Attornies suf-  
fering persons  
not admitted  
to use their  
names, to for-  
feit 50 l. See  
23 Geo. II.  
c. 26.

*Sett.* 13. Provided always, that nothing herein contained shall extend, or be construed to extend, to deprive the attornies of the dutchy of *Lancaster*, or of the courts of great sessions in *Wales*, or of the counties palatine of *Chester*, *Lancaster* and *Durham*, from acting within their respective jurisdictions.

Persons ex-  
empted.

*Sett.* 14. " And, to the end that justice may be impartially administered in the severall general or quarter sessions of this kingdom, Be it further enacted by the authority aforesaid, That no clerk of the peace, or his deputy, nor any under sheriff, or his deputy, shall, from and after the said twenty-ninth day of *September*, act as solicitor, attorney, or agent, or sue out any process, at any general or quarter sessions of the peace to be held for such county, riding, division, city, town corporate, or other place within this kingdom, where he shall execute the office of clerk of the peace, or deputy clerk of the peace, under sheriff, or deputy, on any pretence whatsoever; but if any clerk of the peace, or his deputy, or any under sheriff, or his deputy, shall presume to act as a solicitor, attorney, or agent as aforesaid, such clerk of the peace, or his deputy, under sheriff, or his deputy respectively, shall be subject and liable to a like penalty of fifty pounds, to be recovered in manner aforesaid.

No clerk of  
the peace,  
under sheriff,  
&c. to act as  
attornies, &c.  
at quarter ses-  
sions for the  
county, &c.

Penalty 50 l.



Clerks, whose masters have died, serving the residue of their times with others without fresh contracts, to be admitted.

Persons admitted sworn clerks in the office of the six clerks, or bound for five years, &c. may be admitted solicitors.

Clerks, whose masters have died, &c. entering into fresh contracts, and serving the residue of their time, the same to be effectual.

*Sett.* 15. " And whereas several persons have been bound by articles in writing to attornies of one of his majesty's courts at *Westminster*, to serve them as their clerks for the term of five years, which attornies have died before the expiration of the said five years, and after their deaths such persons so bound have served the remainder of the said term with some other attornies of the said courts, but have neglected to enter into articles with the said other attornies for the remainder of the term of five years, and therefore doubts have arisen, whether such persons could be admitted attornies of any of his majesty's courts, by reason that such service was not strictly in pursuance of the direction of the before-mentioned act; Be it therefore enacted and declared by the authority aforesaid, That all such persons who shall have been so bound as aforesaid for the term of five years to attornies of any of his majesty's courts at *Westminster*, which said attornies shall have died before the determination of the said term, if such persons shall afterwards, and before the twenty-fifth day of *March* one thousand seven hundred and forty-nine, have served the residue of the said term of five years, with some other attornies of one of his majesty's said courts, though without entering into any new articles, such persons having so served during the said term of five years, shall and may be admitted attornies in any of his majesty's courts at *Westminster*; any thing in the said act, or in this present act, contained to the contrary in any wise notwithstanding.

*Sett.* 16. " And be it further enacted by the authority aforesaid, That any person, who shall have been admitted a sworn clerk in the office of the six clerks of the court of *Chancery*, or shall have been bound by contract in writing, to serve as a clerk for and during the space of five years, to a sworn clerk in the said office, and for and during the said term of five years shall have continued in such service, or shall have continued in such service for the space of three years, or more, and shall have been admitted a waiting clerk, and acted as such during the residue of the said term of five years, may be examined, sworn, and admitted and inrolled as a solicitor, in the same manner as solicitors in courts of equity are by the said act required to be examined, sworn, admitted, and inrolled; any thing in the said act to the contrary notwithstanding.

*Sett.* 17. " Provided also, and it is hereby further enacted, That if any sworn clerk in the said six clerks office, with and to whom any person hath been, or shall be bound by contract in writing as aforesaid, to serve as a clerk for the term of five years, shall happen to die before the expiration of the said term of five years; or if such contract shall, by mutual consent of the parties, be vacated, or in case such clerk be legally discharged by any rule or order of the said court of *Chancery*, before the expiration of the said term of five years; then, and in any of the said cases, if such clerk shall by contract in writing be obliged to serve, and shall accordingly serve as a clerk to any other sworn clerk in the said six clerks office, or to any solicitor who shall be sworn, admitted, and inrolled, pursuant to the said act of the second year of his present majesty, during the residue of the said term of five years, then such service shall be deemed and taken to be as good and effectual as if such clerk had continued

tinued to serve as a clerk for the term of five years to the same person to whom he was originally bound by contract in writing as aforesaid.

*Seet.* 18. "Provided always, and it is hereby further enacted by the authority aforesaid, That no sworn clerk in the said six clerks office shall have more than two clerks at one and the same time, including the clerk who shall be entered on the roll kept by the master of the rolls, or his secretary, for that purpose." No sworn clerk to have more than two clerks.

*Seet.* 19. "Provided also, and it is hereby further declared and enacted by the authority aforesaid, That nothing in this act contained shall extend or be construed to extend to the taking or binding, examination, swearing, admission, or inrollment of the attornies, or clerks of the offices of the king's remembrancer, treasurer's remembrancer, pipe, or office of pleas in the court of *Exchequer* at *Westminster* for the time being, but that the said attornies, and clerks of the said respective offices shall and may be taken, bound, approved, sworn, admitted, and practise in the said court of *Exchequer*, in like manner as they usually have been, and might have done before the making of this act, and may practise in any of the said courts of record before-mentioned, in the name, and with the consent of some sworn attorney of such court, such consent being in writing, and signed by such attorney as aforesaid, in the manner as they have usually been and might have done before the making of this act; any thing therein contained to the contrary notwithstanding." Persons exempted.

**Stat.** 23 *Geo.* 2. c. 26. [*A. D.* 1750.] made, among other purposes, "To amend an act made 2 *Geo.* 2. for better regulation of attornies and solicitors." 23 *Geo.* 2. c. 26.

*Seet.* 15. "And whereas by an act of parliament made and passed in the second year of the reign of his present majesty, (intituled, an act for the better regulation of attornies and solicitors) it was enacted, That from and after the first day of *December* one thousand seven hundred and thirty, any person who should be sworn, admitted, and inrolled to be an attorney in any of his majesty's courts of *King's Bench*, *Common Pleas*, *Exchequer*, counties palatine of *Chester*, *Lancaster*, and *Durham*, and great sessions in *Wales*, as is therein directed, might be sworn, admitted and inrolled to be a solicitor in all or any of the courts of equity, in the said act specified, without any fee for the oath, or any stamp to be impressed on the parchment, whereon such admission should be written, if the master of the rolls, two masters of the *Chancery*, the barons of the court of *Exchequer*, the chancellor of the dutchy of *Lancaster*, and the judges of the other courts of equity, in the said act mentioned for the time being, or any of them respectively, should, upon examining such attorney touching his fitness and capacity to act as a solicitor in courts of equity, be satisfied that such attorney is duly qualified to be so admitted; but there being no provision made in the said in part recited act, for admitting persons (who had been, or shall be sworn, admitted, and inrolled solicitors of any of the courts of equity in the said act mentioned) attornies of any of his majesty's courts of law therein also mentioned, although such solicitor should be duly qualified in all other respects; Wherefore, and to supply such omission, Be it enacted by the authority aforesaid

Solicitors in the courts of Equity may be admitted attornies without fees.

aforesaid, That from and after the second day of *May* one thousand seven hundred and fifty, any person who hath been already, or who at any time or times hereafter shall be sworn, admitted, and inrolled a solicitor in any of his majesty's courts of equity at *Westminster*, in such manner as by the said act is directed, may be sworn, admitted, and inrolled to be an attorney of his majesty's court of *King's Bench* or *Common Pleas* at *Westminster*, without any fee for the oath, or any stamp to be impressed on the parchment whereon such admission shall be written (his having been sworn, admitted, and inrolled a solicitor in any of the courts of equity afore-mentioned notwithstanding) if the judges of the said courts of *King's Bench* or *Common Pleas* for the time being, or any of them respectively, shall, upon examining such solicitor, touching his fitness and capacity to act as an attorney in the said respective courts, be satisfied that such solicitor is duly qualified to be sworn, admitted, and inrolled an attorney, pursuant to the said in part recited act, and other the laws now in force concerning attornies and solicitors.

7 Geo. 3.  
c. 31.

By *Stat. 7 Geo. 3. cap. 31.* It is enacted, that persons, who have omitted to cause affidavits to be made and filed within due time, of contracts to serve as clerks to attornies, or solicitors, causing the same to be done on or before 25 Dec. 1767, are indemnified; and such affidavits are declared to be effectual. [*For more learning concerning attornies, see Cunningham's Law Dict. tit. Attorney; The law of attornies and solicitors; or Laws concerning masters and servants, p. 83 to 114*]

## Award.

**A**WARD is a determination or judgment which one or more makes at the request of two parties at the least, for and upon account of some debt, trespass, or other controversy between them. *Termes de la ley.*

To every award, five things are incident, namely, matter of controversy, submission, parties to the submission, arbitrators, and delivering of the award. *Dyer 217. pl. 60.*

The matters in controversy.

Where the right of Freehold is in debate, the property cannot be transferred by an award; for the arbitrators are in the room of the parties themselves, and act in their stead as far as commissioned; whatever therefore the parties can do, may be done by the arbitrators, but the parties cannot pass corporeal inheritances without solemn livery. But if the condition of an obligation is to stand to the award of J. S. touching such lands, and the arbitrator awards the lands to one, and that the other should release to him; if he do not do this, the obligation is forfeited, though the other party do not convey to him to make him a good title; for the arbitrator hath not awarded any act to be done by the party, and the award itself cannot transfer the right, and so must be void, and then the condition of the obligation cannot be forfeited; for the awarding the lands to one cannot be

be expounded, that the other shall infeasible him. If, where there is no bond, the arbitrator award that one shall infeasible the other, it seems an action on the case may be maintained for not doing it; for the award in itself is as good as if there were a bond, and then there is the same reason an action should lie, as that the condition of the obligation should be forfeited; for if such an award were void, then the condition of the obligation should be forfeited; for if such an award were void, then the condition of the obligation to perform it could not be broken. 1 *Bac. Abr. tit. Arbitrament and Award*. (A) cites 1 *Rol. Abr.* 242. 14 *Hen.* 4. 19, 24. 9 *H.* 6. 6. 3 *H.* 4. 6. 11 *H.* 4. 12. *Keilw.* 99. 1 *Leon.* 288. 1 *Rol. Abr.* 244. 9 *E.* 4. 44.

An annuity is not determinable by award, for it is reckoned in nature of a freehold, and therefore cannot pass without the deed of the party. 1 *Rol. Abr.* 266.

Partition cannot be made by award, for a freehold cannot pass without livery and seisin. 1 *Rol. Abr.* 242.

It has been doubted, whether leases for years, being chattels real, could be transferred by award; therefore it seems safest when the controversy relates to these, that the parties be bound in mutual obligations to perform the award; and then if the arbitrators award that one shall assign, transfer, &c. the lease to the other, if he refuses, he forfeits his obligation. 1 *Rol. Abr.* 242. 9 *Co.* 78. 6 *Co.* 41. 1 *Leon.* 104.

Causés criminal are not arbitrable, because they ought to be punished for the common good. *West Symb. part 2. sect.* 23. Though the submission be by bond, yet the obligation is void, and the parties may be punished for entering into such bonds. 2 *Ven.* 109.

Also causes matrimonial seem not arbitrable, because marriage ought to be free, and religion disallows severing those whom the church hath joined. *West Symb. part 2. sect.* 33. 1 *Rol. Abr.* 252. But the damages a person sustained by a promise of marriage, or any thing relating to a marriage portion, may be submitted. 16 *E.* 4. 2.

Debts due by specialty cannot be discharged by naked Award; but if the submission were by bond the award would be a good bar, for one specialty may be dissolved by another. 6 *Co.* 44. *Cro. Jac.* 99.

A certain and fixt debt is not discharged by an award, for the end and design of an arbitration is to reduce uncertain debts and duties to a certainty; and to award a man a certain debt is to give him no more, nor do any greater thing for him than was done before; for now he can have but an action, and that he might have before, and to give him less than he had before is to do him a manifest injustice, which the arbitrator cannot do. 1 *Rol. Abr.* 264.

It is held clearly, that all chattels personal, and personal actions, such as trespass, conspiracy, maintenance, &c. may be determined by arbitration, and the right transferred by naked award, though the submission were not by deed; for these being transferable by the party himself without any solemnity, whatever the parties themselves could do, may be done by the arbitrators, who are their substitutes, and stand in their place; and if on these submissions without deed the arbitrators award one party a sum certain, he may bring an action of debt for it; but if they award the doing of

some other thing, which is beneficial to him, he must bring his action on the case. 1 *Roll. Abr.* 242. 9 *Co.* 78.

The arbitrators cannot make an award of matters different from those which were submitted; therefore if the submission be of ewes with lambs; and after the submission the lambs are yeaned, they cannot arbitrate concerning the lambs. 1 *Keb.* 600. 2 *West Symb. sect.* 32.

The different kinds of submission and the revocation thereof.

The submission is the authority given by the parties in controversy to the arbitrators, to determine and end their grievances, and this being a contract or agreement must not be taken strictly, but largely, and according to the intent of the parties submitting. *West Symb. part 2. sect.* 1, 2.

This submission may be by word or deed; if the submission be by word, there is no remedy to enforce the party to perform the award, but reciprocal actions on the case, and an action of debt will lie, if money be awarded, for it is in nature of a simple contract. 1 *Keb.* 600. 2 *Keb.* 238. 3 *Keb.* 64.

If the submission be without deed, it may be revoked without deed, and the party shall lose nothing, for *ex nuda submissione non oritur actio*. 8 *Co.* 81, 82. But the party must give notice of the revocation. 1 *Sid.* 281.

Also if the submission be by deed, it is of its own nature countermandable, though made irrevocable by the express words of the deed, for the arbitrators being constituted, and put in the place of the parties, by their consent, to act for them, they can no longer act than they have such consent. 8 *Co.* 82. 1 *Sid.* 281. 1 *Brownl.* 62. 2 *Brownl.* 290.

But where a man obliges himself to stand to an award, if the party revokes it according to his power, he hath forfeited his obligation, for the making the award becomes impossible by his own default, and therefore the obligation is simple; but if it be without obligation he forfeits nothing. 8 *Co.* 82, 83. 1 *Brownl.* 62.

If several plaintiffs or defendants submit themselves to an award, one cannot revoke the submission without the other, for joint acts are considered as the acts of one person, and there can be no revocation without the act of that person that made the submission. 1 *Brownl.* 62.

If a *Feme Sole* submits to arbitration, and afterwards marries, this is a revocation of the submission; and if it be by bond the bond is forfeited. 2 *Keb.* 865. 1 *Jones* 388.

If one have judgment in an ejectment, and then they submit the controversy to arbitration, but before any award be made he sues out execution, it is a forfeiture of the bond, for he is the cause no award can be made. *T. Jones* 134.

In debt upon a bond to perform an award, and *oyer* of the condition, the defendant pleads no *Submission*, the plaintiff need not assign a breach, for the defendant puts the whole stress of his cause upon a matter antecedent to the alledging a breach; for if there was no submission there could be no award, and consequently no breach of it. 1 *Sid.* 290.

Also a submission may be made a rule of court, pursuant to the statute 9 & 10 *W.* 3. And it is said, that although the submission be by bond, yet the party may have it made a rule of court, in which case it is said, he may

may proceed on the bond, and likewise have an attachment for not performing the award. 1 *Salk.* 73. See 1 *Sid.* 54. *Raym.* 35.

*Stat. 9 & 10 Will. 3. c. 15. [A. D. Intituled.]* "An act for determining differences by arbitration."

Whereas it hath been found by experience, that references made by rule of court have contributed much to the ease of the subject, in the determining of controversies, because the parties become thereby obliged to submit to the award of the arbitrators, under the penalty of imprisonment for their contempt, in case they refuse submission: Now for promoting trade, and rendering the awards of arbitrators the more effectual in all cases, for the final determination of controversies, referred to them by merchants and traders, or others, concerning matters of account, or trade, or other matters: Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by authority of the same, That from and after the eleventh day of *May*, which shall be in the year of our lord one thousand six hundred ninety-eight, it shall and may be lawful for all merchants and traders, and others desiring to end any controversy, suit, or quarrel, controversies, suits, or quarrels (for which there is no other remedy but by personal action or suit in equity) by arbitration, to agree that their submission of the suit to the award or umpirage of any person or persons should be made a rule of any of his majesty's courts of record, which the parties shall choose, and to insert such their agreement in their submission, or the condition of the bond, or promise whereby they oblige themselves respectively to submit to the award or umpirage of any person or persons; which agreement being so made and inserted in their submission or promise, or condition of their respective bonds, shall or may, upon producing an affidavit thereof, made by the witnesses thereunto, or any one of them, in the court of which the same is agreed to be made a rule, and reading and filing the said affidavit in court, be entered of record in such court, and a rule shall thereupon be made by the said court, that the parties shall submit to, and finally be concluded by, the arbitration or umpirage which shall be made concerning them by the arbitrators or umpire, pursuant to such submission; and in case of disobedience to such arbitration or umpirage, the party neglecting or refusing to perform and execute the same, or any part thereof, shall be subject to all the penalties of contemning a rule of court, when he is a suitor or defendant in such court, and the court on motion shall issue process accordingly, which process shall not be stopped or delayed in its execution, by any order, rule, command, or process of any other court, either of law or equity, unless it shall be made appear on oath to such court, that the arbitrators or umpire misbehaved themselves, and that such award, arbitration, or umpirage, was procured by corruption, or other undue means.

*Sec. 2.* "And be it further enacted by the authority aforesaid, That any arbitration or umpirage procured by corruption, or undue means, shall be judged and esteemed void and of none effect, and accordingly be set aside by any court of law or equity, so as complaint of such corruption or undue

Merchants and traders, &c. desiring to end controversies by arbitration, may agree their submission of the suit to the award of any person.

Agreement so made to be inserted in their submission, &c.

Parties to be finally concluded by such arbitration. In case of disobedience, a party neglecting subject to penalty, &c.

unless arbitrators misbehaved themselves.

Corrupt arbitration void, and may be set aside, &c.

practice be made in the court where the rule is made for submission to such arbitration or umpirage, before the last day of the next term after such arbitration or umpirage made and published to the parties; any thing in this act contained to the contrary notwithstanding.

The act 9 & 10 Will. 3. c. 15. was made to put submissions where no cause was depending, upon the same foot with those where there was a cause depending: and it is only declaratory of what the law was before, in the latter case. 2 Bur. Rep. 701. Mich. 32 Geo. 2. B. R. Lucas ex diff. Dr. Markham et al. v. Dr. Wilson.

Upon shewing cause why an attachment should not issue against Dr. Wilson, for refusing to perform an award made pursuant to a submission entered into by rule of this court in *the above mentioned cause then there depending*, it became part of the question, "Whether *this* was within the act of 9, 10 W. 3. c. 15. for determining differences by arbitration." And the court thought that it was *not*, but that it stood upon the common law, independant of the act, which was made, to put submissions to arbitrations in case where there was *no* cause depending upon the *same* foot as those where there *was* a cause depending. But here *was* a cause depending at the time of the submission. And therefore the case was *not* within the provision of this act. And lord Mansfield held this act to be *only declaratory* of what the law was before, in cases where there was a cause depending in the court. He added, that the court will *not enter* at all into the merits of the *matter* referred to arbitration, but only take into consideration such legal objections as appear upon the face of the award, and such objections as go to the *misbehaviour of the arbitrators*. In the present case, the rule for the attachment was made absolute.

*To agree that their submission*] See the above act 9 & 10 Will. 3. c. 15. *sect. 1.* An arbitration bond had these words, *And if the obligor shall consent that his submission shall be made a rule of court, that then, &c.* Upon motion to make this submission a rule of court, it was objected, that these words did not imply his consent, but if he would forfeit his bond, he need not let it be made a rule of court, yet because this clause could be inserted for no other purpose, the court took these conditional words to be a sufficient indication of consent. 1 Salk. 72.

*Any of his majesty's courts of Record*] A matter being referred by rule of court to the determination of the judges of assize, it was moved that the judges determination might be made a rule of court; and *per Holt*, where a matter is referred to arbitrators by rule of court, and they make their award, we will compel a performance of it, as much as if the award were part of the rule, so a new rule is needless. 1 Salk. 71. *Note*; the constant practice is to make the rule at *Nisi Prius* a rule of the court above; which is always granted on motion.

*Shall be subject to all the penalties*] See the above act of 9 & 10 Will. 3. *sect. 1.* If one of the parties revokes the submission, or hinders the arbitrators from proceeding in the award, the court will grant an attachment. 1 Salk. 37. But if the party dies, there is no remedy by attachment against his representative, for the contempt dies with him. 2 Vern. 444. If the party excepts to the award, though it be affirmed, an attachment will not be granted; for the nonperformance of it while the matter was *sub judice*, was no contempt. 1 Salk. 73. Also the party must be required personally to perform the award, and such personal demand must be made out by affidavit, otherwise the court will not grant an attachment. 1 Salk. 83.

*Arbitrators*

*Arbitrators or umpire, misbehaved themselves*] On motion to set aside an award, because the arbitrators went on without giving the party time to be heard, or produce a witness, *Holt* said, That the arbitrators being judges of the party's own choosing, he shall not come and say, that they have not done him justice, and put the court to examine it; *aliter* when they exceed their authority. 1 *Salk.* 73. But awards have been frequently set aside, especially in equity, where the arbitrators have appeared to have been mistaken, or have been guilty of corruption or partiality; as if they have an interest in the thing in controversy. 2 *Vern.* 251. So where there are three arbitrators, and two of them by fraud or force exclude the other, or if they have private meetings, and admit one of the parties, and give notice to the other. 2 *Vern.* 514. So where they awarded 495*l.* against one of the parties, for calling the other, who was a butcher, a *bankrupt knave*, repair his honour, as they called it. 3 *Chan. Rep.* 76. 2 *Vern.* 251. *Vide* 1 *Vern.* 157. So where the submission was to arbitrators, and they had power to choose an umpire, which they did, by throwing *cross* and *pile* who should name him, and for this the court set aside the award. 2 *Vern.* 485.

An award was made a rule of the court of the *King's Bench* according to a submission for that purpose, and an attachment has been granted for not obeying the award. The plaintiff here has brought a bill suggesting fraud and corruption in the arbitrators, and praying that the award may be set aside. The defendant pleads the award in bar to the plaintiff's bill, and insists it is a fair and just award. Lord chancellor said to the plaintiff's counsel, why did you not proceed in the court of *King's Bench*, the proper court to examine into the partiality and corruption of arbitrators, which you might have done by shewing cause, why the rule for an attachment on the non-performance of the award should not be made absolute. I remember, said his lordship, but one instance in this court of a bill brought for this purpose, which was in the case of *John Ward*. But as the answer of the defendant to this bill is very loose and general, and there is an express submission to amend any errors which the arbitrators may have made in respect to the mutual accounts delivered in to them by the parties: Let the plea stand for an answer, with liberty to except.

The court wherein the rule is made is the proper court to examine into the partiality of the arbitrators.  
2 *Atkyns's Rep.* 155. In *Chan. March* 16, 1740.

The plaintiff and Mr. *Eade* had been partners in trade, but upon the dissolution of the partnership, some disputes arising between them, a suit was carried on for some time in equity; but a proposal being made to refer all matters in controversy, it was agreed to, and the submission was made an order of this court; one condition in it was, that the parties should be restrained from bringing a bill in equity against the arbitrators: they awarded 9150*l.* to be due to Mr. *Eade* on the ballance of accounts; upon which Mr. *Lingwood* brought a bill against the arbitrators, *Croucher* being one, charging corruption and partiality, and praying that they may set forth the general accounts between the plaintiff and the defendant *Eade* relating to the partnership. To so much and such part of the bill as seeks a general account, &c. the defendant refused to discover, and pleadeth the award in bar. The bill further prayed a discovery from what account or accounts of the parties they founded their award. To this part they likewise refused

Where the parties have agreed to make the submission to an award a rule of court, and to be restrained from bringing a bill in equity, the arbitrators, notwithstanding the award may be defective in point of law, may plead it in bar to a bill here.



2 Atkyn. Rep. 395. in Chan. 6 Aug. 1742. Arbitrators may plead the award in bar to a bill charging partiality, but they must support their plea by shewing themselves impartial, or the court will give a party a remedy by making them pay costs.

Where a submission to an award has been made a rule of court, it is a contempt of that court to dispute the order, unless they can shew partiality, corruption or misbehaviour in the arbitrators.

refused to discover, and pleaded the award itself in bar. *Lord Chancellor*: There are many instances in this court, where arbitrators to a bill charging corruption and partiality, may plead the award in bar to the discovery; but then it is incumbent upon them to support their plea, by shewing themselves incorrupt and impartial, or otherwise the court will give a party a remedy by making arbitrators pay costs. I remember an instance of this sort in a famous case of *John Ward*, who being a party in a cause where one *John Warner* was an arbitrator, upon *Ward's* coming into the room he said, I *John Warner* will make you *John Ward* pay costs; *Ward* complained to the court of this partial behaviour in the arbitrators, and the court inverted *Warner's* threats, for they made him pay *John Ward* costs. The great doubt with me is, as this award seems to be executory and not final, whether it is a good award at law; and if it is not good at law, then how can the arbitrators plead it in bar to the discovery prayed by the bill?

When the parties have submitted to make the submission to the award a rule of court, it is a contempt of this court to dispute the order, unless they can shew partiality, corruption or misbehaviour in the arbitrators; and this will depend upon the denial of these facts in their answer; and if they do that sufficiently, the plea ought to be allowed; but still, if upon the hearing of the cause, the evidence should be strong enough to convince the court that the arbitrators have been guilty of corruption, partiality, or misbehaviour, it will effectually open the plea: therefore I am of opinion notwithstanding any defect in the award in point of law, yet upon the parties agreeing to make the submission a rule of court, and one condition in it being to be restrained from bringing a bill in equity against the arbitrators, the plea of the award by them ought to be allowed. In the case of *Mr. Robins*, the counsel, who was appointed an arbitrator by this court, accepted of it upon a proviso that the parties would enter into a rule not to bring a bill in equity, which was done accordingly; notwithstanding this, the party against whom the award was made, brought a bill against the arbitrator, and charged corruption and partiality; upon which *Mr. Robins* moved lord chancellor *King* that he might be struck out from being a party to the cause: his lordship granted the motion, and said it would be a very great hardship upon arbitrators, if they should be harrassed with suits, when they undertake such an employment without any gratification; and that allowing they are liable to such a bill, would effectually discourage persons of worth from accepting of being arbitrators; and therefore he struck him out from being a party. So in the case of the *East-India* company, where they agreed to wave the penalty, but insisted upon it afterwards; the bill was dismissed as against the person who was liable to the penalty. *Vide the East-India company versus Sandys*, 1 *Vern.* 127.

A plea to a bill brought to set aside an award, for a general account; *Lord Harwicke* al-

The plaintiff preferred his petition on the 26th of *March* last, to set aside the award in the matter between him and *Eade*, which was dismissed, but without prejudice to his bringing a bill for the like purpose; he brought a bill accordingly against the arbitrators and *Eade*, and prays by it that he may have an inspection of all the accounts, from which the arbitrators framed their award, and that it may be set aside, and that the defendant

*Eade*

*Eade* may account generally for all transactions during his partnership with the plaintiff. lowed it as  
against the ge-  
neral account,  
for fraud or par-

but held that the plaintiff was not precluded at the hearing from objecting to the award, for partiality in the arbitrators. 2 Atkyns's Rep. 401. In Chan. 15 Jan. 1742. *Lingwood v. Eade*.

The defendant *Eade* pleads, that in former causes between him and the plaintiff in this court, an order was made the eighteenth of *November* one thousand seven hundred and forty, at the request, and by the consent of the parties, that all matters in difference between them, relating to their joint dealings, or otherwise, should be referred to *Charlton, &c.* and the award to be made on the first of *May* then next; and by a subsequent order of the court, with the consent of the plaintiff's counsel, the time for making the award was enlarged till the first of *November*, and by a third order till the first of *February*; that the arbitrators met forty-five times and upwards, (the plaintiff and defendant being present at the greatest part of the meetings) and having fully heard and examined the plaintiff and the defendant and their several witnesses, made their award within the time limited; and among other things declared, that they had taken an account of the outstanding debts due to, or owing by or from the complainant, and the defendant, or either of them, on account of their joint dealings, and they awarded that each should pay and discharge one equal moiety of the several debts therein mentioned, (that is to say) to Samuel Torin 92*l.* 10*s.* 9*d.* to Slingsby Bethel 82*l.* 18*s.* 2*d.* and to John Hide 15*l.* which the said arbitrators found to be then remaining due from the complainant or defendant, or one of them, on their joint accounts, be the same more or less than as abovementioned.

“ That the arbitrators have set forth, in a schedule to their award, an account of sundry debts and effects owing to the partnership, amounting to 509*4l.* 14*s.* 2*d.* which debts and securities they awarded to belong in moieties to the plaintiff and the defendant; and for the better getting in the same, the arbitrators did thereby recommend it to the defendant and the complainant to consent that an order might be made by this court, for the appointing a proper person conversant in mercantile affairs, to collect in the same for their joint use, and in case either of the parties should refuse to consent thereto, the arbitrators did make it their humble request, to this court, to order the same, as the most probable means to prevent future litigations between the said parties.

“ That the arbitrators did award and declare, that exclusive of the above matters, there was then due from the plaintiff to the defendant 919*4l.* 19*s.* 6*d.* on a just ballance, which they awarded to be paid by the plaintiff to the defendant by instalments of 2000*l.* at each payment, with interest at 4*l.* per cent. from the second of the same *February*.

“ That lastly they did award, that upon payment of the said 919*4l.* 19*s.* 6*d.* by the plaintiff, his executors, &c. they the said plaintiff and this defendant, their respective executors and administrators, should mutually execute and deliver to each other, respectively, a good and sufficient release and discharge (the form whereof to be previously settled by one of the masters of this court; in case this court should be pleased to give directions for the settling thereof,) whereby the said parties should respectively release to each other,

other, all matters in difference between them relating to their joint dealings, &c.

“The defendant for plea further saith, that all the said particulars so awarded are fair and just; all which matters and things the defendant pleads in bar to the plaintiff's bill, and submits to the court whether he is obliged to make any further or other answer.”

Mr. *Murray*, counsel for the plaintiff, confined himself to the objections against the award, because he said the plea of the award must fall to the ground, if the award itself is not good. An award must be the judgment of the arbitrator, and final; and it has been held to be a bad award, where the arbitrators direct that costs should be paid according to taxation. The first objection he took was, that here the arbitrators award, that the debts due from the partnership should be given in moieties by *Lingwood* and *Eade*, and then mentions only three debts, so that in this respect it is not final. The second objection, that the arbitrators recommending it to the parties, to consent that an order might be made by this court, for the appointing a proper person to receive in the debts due to the partnership, is deputing a third person to do an act, which ought to have been done by themselves, and therefore is not properly their own judgment. The third objection, that the arbitrators ought to have settled the release themselves, and not have left it to be done by a master under the order and directions of this court; and cited 1 *Salk.* 71. *Glover* versus *Barrie*. That upon the whole it was not a complete award, and therefore the plaintiff should be admitted to go on with his bill for an account, notwithstanding the award.

Mr. Attorney General, counsel for the defendant *Eade*, in answer to the second objection, with regard to the receiver, said, the arbitrators could not do otherwise, as it was uncertain what would be got in, and therefore they could not award the exact sum to each of the parties, but to be divided when received.

*Lord Chancellor* then put this case to Mr. Attorney General (which came before him when he was chief justice); Arbitrators had awarded that each of the parties should give security to perform the award, but left it to a third person to settle the securities, and for this reason held to be a void award; compare now this case with the present, where the arbitrators have referred it to a third person to get in the debts due to the partnership.

To this Mr. attorney general said, the award is final as to the property, but the means of ascertaining that property is only recommended to be left to a person appointed by the court; in the case mentioned by your lordship, the arbitrators actually transferred to a third person a power which belonged solely to themselves. As to the objection that the award is bad, because the form of the release is left to a master; as long as the substantial part, the awarding a release of all demands, is provided for by the arbitrators; the bare leaving it to a master to settle the form of the release, can never vitiate the award.

Mr. *Murray*, the solicitor general, said in reply, the arbitrators here have awarded things out of the submission, that affect the justice of the case  
between

between the parties, which vitiates the whole award, and consequently is no bar to the account.

*Lord chancellor* : Though the bill is brought for two purposes, yet one is consequential to the other. First, to set aside the award. Secondly, for a general account. The prayer of the bill to set aside the award must be founded upon the fraud, corruption, or misbehaviour of the arbitrators; for it would be improper to come into this court to set it aside merely for an objection in point of form. The other part of the bill is the original right he had before the award. I must consider the plea as it is pleaded to the latter part of the bill, the general account. For, to be sure, the plaintiff is intitled to an account, unless the award is a bar; and therefore the court must enter into all the legal objections against the award, which a court of law would have done, as it is insisted on by the plea, to prevent the general account.

I own I have been a good deal doubtful as to the nicety that courts of law have used, in determining awards; for they have formerly gone so far, as to make it almost impossible for arbitrators to do what is the main intention of the submission, the putting an end to differences between parties.

But now courts of law themselves, have in some measure departed from very strict rules; as where arbitrators refer costs to be taxed, the judges have compared awards to judgments at law, which though they must have certainty, yet the officers tax costs, and therefore, where arbitrators give such directions, it shall not vitiate the award; though in the old cases it has been held, that arbitrators could not in any instance delegate their power.

It may possibly be worth while for me to consider, as courts of law themselves have relaxed from their rigour and nicety in determining awards, whether courts of equity may not still take greater latitude: but I am unwilling to do this, because it would introduce confusion and uncertainty, and make awards a mixed case, partly determined by arbitrators, and partly by the authority of this court; and therefore I chuse rather to confine myself to one rule.

fusion and uncertainty; better therefore to adhere to one rule.

As to the first objection, with regard to debts due from the partnership, I will not lay any weight upon it; for as courts of law have said, they will never make a presumption to overturn an award; neither will I in this case presume that there are any other debts due from the partnership, than what are mentioned by the arbitrators themselves.

As courts of law have said they will never make a presumption to overturn an award; so neither will a court of equity.

As to the second objection, with regard to the receiver, which is recommended by the arbitrators, I own I have great doubts; but as the justice between the parties is the material thing, and the award being good

the purpose of parties in submitting to a reference, the court will not set it aside upon trivial objections.

to a common intent, answers the purpose of parties in submitting to a reference; I am of opinion it is sufficient, for in cases of this sort, in mercantile affairs, which cannot admit of certainty, it would be too nice to defeat awards upon objections of this kind.

If arbitrators delegate their power, the award is totally void.

It has been said by the plaintiff's counsel, that the arbitrators recommending it to the parties to consent that an order might be made by this court, for the appointing a receiver, &c. and in case of the parties refusal to consent thereto, the requesting the court to order the same, is a delegation of their power, which arbitrators cannot do.

And to be sure, if they have delegated their power, the award is void for the whole. But Mr. attorney general says, what the arbitrators have done in this respect, is at most but surplufage. Yet if it affected the justice of the things submitted, it would not be surplufage. But this seems to me to be only a recommendation of the arbitrators to the parties, which is not tying them down to submit that a person should be so appointed, but leaves them at large; and if the parties do not approve of this scheme, why then it is surplufage only, and not a delegation of their power. The question is, whether the arbitrators awarding that the debts due to the partnership, when received, shall be divided in moieties between the parties, is sufficient; and I am of opinion it is, for the arbitrators had no controul over the debtors themselves, who might pay, if they pleased, the whole to one of the partners.

Arbitrators need not point out particularly the method in which the award is to be carried into execution.

To lay it down for a rule, that arbitrators must chalk out particularly the method in which the award is to be carried into execution, would be too nice, and overturn a great number of awards: for if this doctrine was to prevail, suppose one of the parties should release a debt due to the partnership, it would be a breach of the award; for *qui dirimit medium dirimit finem*, and the other party could have no remedy, but either to bring an action or a bill for carrying the award into execution, which would make it endless, and no award could ever be effectual to finish disputes between parties. I cannot think of any other method the arbitrators could have pursued; for though it has been said at the bar, that they might have directed the parties to give such person as the arbitrators should appoint, a letter of attorney to get in the debts, yet this would not have been adviseable, because if the person so deputed proved insolvent, it would have been doubtful whether the arbitrators themselves might not have been liable.

Where arbitrators have awarded release the leaving it to the court to give directions to a master to settle the form does not vitiate an award.

The last objection is the arbitrators leaving it to a master to settle the form of the release. Now the general rule in regard to making awards is this, that arbitrators should award each party to give a release, and if they do not, it is at the peril of the parties. Here it is, in the first place, fully and completely described in the award, what the parties should do in point of giving releases, and then follows the reference to the master to settle the form. If the award had said, that the release should be settled by the court first, and then the arbitrators would consider whether they should order a release between the parties, this would have been very different, and I should have inclined to think it a delegation of their power, and the award conse-

confe-

consequently void. But here they have awarded releases, and only leave it to the court, if they think proper, to give directions to a master to settle the form; and it would be very extraordinary when, I think, the arbitrators have done all that is necessary, and there is no occasion for the court to interfere; yet because they have said, we leave it to the court, therefore I must interpose merely for the sake of making that a bad award, which without my interposition would be a good one. Upon the whole, I am of opinion the award is good to a common intent, and the plea consequently must be allowed against the general account; but the plaintiff is not precluded at the hearing of the cause from objecting to the award for fraud or partiality in the arbitrators.

This came on before the lord chancellor, on the defendant's plea, that the plaintiff and he, on the 15th of November one thousand seven hundred and twenty-eight, executed articles of co-partnership, by which they covenanted to become joint traders, as *Blackwell-Hall* factors, for eight years, and agreed, in case any difference should arise relating to their business, or of any covenant in the articles, it should be referred; and avers, that all matters in the plaintiff's bill relate only to the partnership, and that they have never been submitted to arbitration, nor did the plaintiff ever propose a reference, or nominate any person to be an arbitrator, though the defendant offered, and was always ready to submit all matters to arbitration, and demands judgment, if he shall further answer.

In an agreement between partners to refer matters in dispute, arbitrators should be empowered to examine upon oath. 2 Atkyns's Rep. 569. 13 May 1743. *Wellington v. Mackintosh.*

Lord chancellor: The plea ought to be disallowed in this case; and yet I would not have it understood, that such an agreement might not be made in such kind of articles, and pleaded; but such a clause should have in it a power given to the arbitrators to examine the parties, as well as witnesses, upon oath. But this bill is to discover and be relieved against frauds, impositions, and concealments, for which the arbitrators could not examine the parties on oath. Persons might certainly have made such an agreement as would have ousted this court of jurisdiction, but the plea here goes both to the discovery and relief; and if I was to allow the plea as to relief, I could not as to the discovery, and then the court too must admit a discovery, in order to assist the arbitrators, which is not proper for the dignity of the court to do.

Persons that cannot contract cannot submit to arbitration, therefore femes covert, Persons compelled by threats and imprisonment, persons professed in religion, cannot submit. 1 *Bac. Abr.* 136. Of the parties to the submission.

The husband may submit the chattels he hath in right of his wife to an award, for he may dispose of them. *id. ib.*

If an infant submit to arbitration, he may execute or avoid it at his election, as he may all other his contracts. 1 *Roll. Abr.* 730.

Persons attainted or outlawed cannot submit to arbitration, for they have no property, and cannot by the law controvert any thing. 1 *Bac. Abr.* 136.

A dean without the chapter, a mayor without his commonalty, the master of a college or hospital without his fellows, cannot submit to an award, for the submission has the force of a contract, and they cannot contract without them. 1 *Bac. Abr.* 136.

If one party and the deputy or attorney of the other party submit to an award, this is well enough, for the act of my deputy is my own act. 1 *Bac. Abr.* 136.

If several persons do a trespass, and one of the wrong-doers and the party to whom it is done submit to arbitration, and an award is made, the other persons shall take advantage of it by way of extinguishing of the trespass; the same law where the party releases to one of them, for in both cases a satisfaction really is, or is presumed to be made, and a man cannot receive a double compensation for the same wrong. 1 *Roll. Abr.* 268.

If several persons on the one part, and several on the other submit generally to any award, the arbitrators have not only power to determine matters between them jointly, but severally and distinctly also; and an award between one only of the one side and another of the other side is good; for this is not doing less than the commission warrants, since there is an authority in it to determine matters distinctly between them, for the submission is of all matters, so that it contains as well all things severally between each of them, as jointly between them all, and perhaps there may be no cause of award between the others. 1 *Bac. Abr.* 136.

The arbitra-  
tors or umpire.

The arbitrators are persons indifferently chosen, to determine the matters in controversy according to their own minds, whether they be matters of law or fact; infants, persons excommunicate, outlawed, &c. may be arbitrators, for every person must use his own discretion in the choice of his judges, and being at liberty to choose whom he likes best, cannot afterwards object the want of honesty or understanding to them, or that they have not done him justice. *West. Symb. part 2. sect 27. Hard. 44. 1 Salk. 73.*

The arbitrators are personally trusted with the authority, and it is not within their power to assign it; therefore if an award be to stand to the determination of a stranger, this is void; but if an award be, that an arbitrament made by J. S. shall stand, this is good, because it is their own award, though it refers to the act of another; but though the arbitrators cannot transfer their power, yet they may award that others shall do a ministerial act in subserviency to their award; for what is done by such persons, is done by them as servants and instruments of the arbitrators, and is the act of the arbitrator himself; as, that such a conveyance should be made as counsel should direct, such costs paid as the prothonotary should tax, is a good award. 5 *Co.* 78. 1 *Roll. Abr.* 251. *Cro. El.* 726. *Palm.* 146. 2 *Roll. Rep.* 214. 1 *Sid.* 258. *Hard.* 45.

The arbitrators cannot reserve to themselves a future power, since that would enable them to make a double award, without the interposition of those who empowered them at first. *Cro. Jac.* 315, 584. *Hob.* 218. 1 *Sid.* 59.

The arbitrators cannot make their award by parcels at several times, for when they have made an award they have executed their authority, and can do no more; and therefore if two submit all debts, trespasses, &c. And the arbitrators one day make an award of the debt, and of the trespasses another day, this is not good as to the trespasses, but they may deliberate of one thing one day, and of another the other day, and then make an entire award of the whole; also an award made in the night is good, for the

the party's attendance is not requisite; but where an act cannot be done without personal attendance of a third person, it cannot be done in the night. 1 *Rol. Abr.* 250. *Cro. El.* 676.

If a submission is made to *A.* and *B.* when their occasion will permit, convenient time must be given, after request; and if no arbitration be then made, the parties may revoke. 1 *Sid.* 281. 2 *Keb.* 10.

If there be a submission to arbitration, and if they cannot agree before the first of *May*, then the submission is made to *J. S.* to be the umpire, to be made before a certain day then next to come; if the arbitrators never discourse about the matter, so as there is no disagreement between them, yet if they make no award before the day, the umpire may determine the matter; for these words, *if they cannot agree*, are not to be taken literally, but only that if they do make no award, that then, &c. 1 *Rol. Abr.* 261.

If the condition of an obligation be, to stand to the award of certain persons, *A.* and *B.* and *I. S.* being umpire for both parties, in this case an award by *A.* and *B.* is good; for *umpire* in the common signification of the word, denotes a person that is to make an end of the matter, if the others cannot. 1 *Rol. Abr.* 261, 262.

If the condition of an obligation be, to stand to the award of *A. B. C.* and *D. ita quod* the said award before such a day be made in writing by the said *A. B. C.* and *D.* or any two of them under their hands, &c. any two of the arbitrators, without the rest, may make an award; for though by the first part they are bound to stand to the award of those four, yet their power is divided by the subsequent words, and the *ita quod* is but an explanation of the condition, and the whole makes but one sentence. *Yelv.* 203. See 1 *Bac. Abr.* 138.

If the arbitrators and umpire have the same time allotted them to make their award in the submission, as to the umpire it is not absolutely void; for if one of the arbitrators die, or absolutely refuse to meddle, then the umpire may determine the matters; otherwise not; for two different judges cannot have a concurrent jurisdiction of the same thing; and a disagreement between the arbitrators at their first meeting, gives no power to the umpire to interpose, because, though they do not agree at their first meeting, they may at the next. 1 *Bac. Abr.* 138.

The arbitrators may choose the umpire before their own time is expired, for that is no relinquishing the arbitration, but a prudent provision in case they should disagree; and therefore an award by them at any time before their time expired is good, and an award in that time by the umpire is void. 1 *Bac. Abr.* 138.

The condition of a bond was, if the arbitrators make an award on or before the nineteenth of *Feb.* &c. and if they do not make it before, &c. their authority doth not determine till after the nineteenth. And the award cannot be made by the umpire before the 20th. 1 *Bac. Abr.* 138.

If the arbitrators have time to the 10th of *June*, and if they agree not to nominate one to determine it by the 10th, here if the arbitrators choose an umpire, that determines their power; for it seems plainly the design of the parties, that either one or the other may determine it by that time, and not that both shall have concurrent jurisdictions. 1 *Bac. Abr.* 138.



If the arbitrators make an award of part, during their time, the umpire cannot make an award of the rest, unless the submission be, that if the arbitrators make an award of part, or of none, then the umpire may make an award of the part remaining or the whole. 1 *Rel. Abr.* 262.

If the condition of an obligation be to stand to the award of *A.* and *B.* so as the said award be made before such a day; and if they make no award, then to stand to the award of such umpire as the said *A.* and *B.* shall nominate, so as the said umpire do make his award before another day, and the arbitrators before the first day make no award, but afterwards name *C.* to be umpire, who thereupon immediately refuses, and the arbitrators afterwards nominate *D.* who before the last day makes an award; this is a good award; for the nomination of *C.* to be umpire did not make him so; but when he refused, it amounted to no more than a bare proposal to him, and the form of pleading always is *suscepto super se onere arbitri*; so that it is the acceptance makes him umpire. 1 *Vent.* 113, 114.

If the condition of an obligation be, That whereas *A.* and his son, of one part, &c. have submitted to the award of *B.* and *C.* *ita quod* &c. before 1 *May*, and if they make none, to the award of such umpire as they should chuse to be made before the first of *June*, and the arbitrators make no award, but chuse an umpire who makes an award, but *quoad* the son awards nothing; this is a void award; for though the *ita quod* be in the clause referring to the arbitrators, and the award is made by the Umpire, yet the *ita quod* relates by construction to the umpire as well as the arbitrators. 1 *Lev.* 139, 140.

Of the award,  
and what shall  
be deemed a  
good award.

Here it must be observed, that the courts of justice have of late been more liberal in the construction of awards than formerly, and that many of the nicest distinctions to be met with in the books are by no means to be admitted as precedents in expounding awards at this day; and thus the courts do in furtherance of justice, and for quieting of controversies; however, as an award is a judgment, and can only be expounded by itself, without the aid of an averment of matters *debors* or external to explain the meaning of the arbitrators, it is necessary that on the face of it appear, 1st, That it be made according to the submission. 2dly, It ought to be certain. 3dly, It ought to be equal and mutually satisfactory. 4thly, It must be of a thing lawful and possible. 5thly, It must be final. 10 *Co.* 57. *Dyer* 242.

The award  
must be ac-  
cording to the  
submission.

If an award be made of any other thing than what is contained in the submission, it is void; for no act is my own, or binding to me, unless done by me or by commission from me. *Plow.* 396. *Dyer* 242.

If arbitrators award to do an act to a stranger, that is good; for the stranger is put by the arbitrators in the place of the party, and they have power to award this act, since it is not impossible or unequal, and it is relating to the submission. 10 *Co.* 131. 3 *Leon.* 62. 1 *Rel. Abr.* 248.

But an award that an act should be done by a stranger, is void, because he is not within the submission. *Hard.* 46.

If two submit to an award all actions, and the arbitrators award a release of all actions till the time of the award, some books have said that this is void for the whole, because it extends to things partly within the submission

sion and partly to things out of it, and it is one entire act; for, say they, to do that act they are not obliged, because not within the submission, and to do an act relating only to things contained in the submission, is another act from what is awarded; others have said that this is not void, unless there are shewn on the other side causes of action arising between the time of making the award, otherwise none shall be intended; and then the release relates only to the things in submission. 1 *Bac. Abr.* 139. 10 *Co.* 131, 132. 1 *Rol. Abr.* 242.

But it has been resolved, and seems now settled, that the act is not intire; for he may release all actions to the time of the submission; for though there is one deed of release awarded, yet that deed relates to several things that are dividable in their own nature one from the other, and so it shall be good for what is in the submission, and void for the residue. 3 *Lev.* 188. 2 *Mod.* 169. 1 *Salk.* 74. 3 *Lev.* 413. 2 *Lev.* 3.

The arbitrators cannot bind a man's liberty or right to real things, where personal things are submitted; and therefore if they award service for two years, or a release of the right of lands in satisfaction for a trespass, this is void; for no body can be supposed to submit more than his personal estate to answer a personal injury, for that only might be taken in execution for it by the common law; but his personal estate may be bound to answer it; therefore if the arbitrators award a horse, money, a quart of wine in satisfaction for a trespass, this is good; for here a new personal duty is raised instead of the former, and to satisfy out of the personal estate is necessarily implied in the submission; for this is a means necessary to quiet the matters. 1 *Bac. Abr.* 140.

If two submit to award all quarrels concerning tithes in a place certain, and the arbitrator awards that one shall pay to the other 20 l. and the other should release to him all actions, this shall be intended all actions concerning the tithes, unless the contrary appear on the other side, and the actions may be severed; and this shall be good for the acts in the submission, and void for the rest. 1 *Bac. Abr.* 140.

A submission of all debts and demands, and a release of all judgments, executions and extents awarded, is a good award. 2 *Sand.* 190.

A submission of all matters between the plaintiff and another, and an award made of things that the party hath in right of his wife, is good; for these things are comprehended under the words *all matters*. 3 *Bulst.* 65.

A submission of all injuries, and award of all debts, duties, and trespasses, a good award; for whatever is against law is an injury. 3 *Bulst.* 312, 313.

A submission of all actions now depending, and an award of all actions, good; for it shall be intended actions depending. *Cro. El.* 66, 858.

There is a controversy between *A.* and *B.* on one part, and *C. D.* and *E.* on the other part, and *C.* for himself, and *D.* and *E.* submits the matter, and promises to stand to the award, if the award be that *C.* shall pay so much in satisfaction of the controversy, it shall bind him, though it concerns *D.* and *E.* who are strangers to the submission, inasmuch as the thing  
awarded

awarded is to be done by him, and not by the strangers to the submission.  
1 *Rol. Abr.* 244.

If there be a controversy between the parson and his parishioners, whether tithes shall be paid in *specie* or not, and they submit all controversies, and the arbitrators award that they shall pay so much a year for tithes, this is good; for that was the debate on the award. 1 *Rol. Abr.* 254.

If the submission be of all controversies to the time of the submission, and the award be that one of them should deliver up an obligation made since the submission, in satisfaction of all matters, &c. this is good, because the bond is given only in satisfaction. 1 *Rol. Abr.* 246.

An award may be good, though part of it may be made of a thing not within the submission; as if an award be to pay 1000 l. and to procure a stranger to be bound to pay 22 l. *per annum*, the plaintiff must lay the breach in not paying the 1000 l. for as to the other part it is wholly void. 1 *Bac. Abr.* 141.

If an award be good for part, and void for part, the plaintiff may assign the breach, that the defendant did not perform the thing submitted, *nec performavit in aliquo*; for it shall refer only to that in the submission, for rest is void, and not to be performed. 2 *Rol. Rep.* 48.

If the arbitrators award on one side an act contained in the submission, and on the other side an act out of it, this a void award for the whole; for this is unequal, because there is something on the one side awarded only, and nothing on the other; for what they intended to ballance it with on the other appears to be void. *Poph.* 134. *Cro. Jac.* 149. 3 *Mod.* 372.

If the arbitrators award 10 l. to one of the parties, and 5 l. to a stranger; this is good as to the party himself, and void for the stranger. 2 *Sand.* 293.

The award  
must be cer-  
tain.

As an award is in nature of a judgment, it ought to be wholly decisive; for if it doth not determine the matter, it becomes the cause of a new controversy; therefore if the arbitrators award a bond for quiet enjoyment of lands, without appointing a certain sum, this is a void award, and the party is not obliged to give bond to the value of the land, for then the sense of the award must be supplied by averment; now if it hath the credit of a judgment, there can be no interpretation made of the award, but by the words of the award itself; for if it receives its meaning from any matters out of the award, the mind of the arbitrators is only guessed at, and not expressed, but the parties intended to be obliged only by what the arbitrators themselves declare to be their award; and were the bond to be according to the value, they cannot assign their power to any person to assess the value. 1 *Bac. Abr.* 142.

So if the arbitrators award that one party shall give security to the other for the payment of 16 l. this is not a good award, because it doth not appear what security, whether by bond or otherwise. 1 *Bac. Abr.* 142.

If the condition of an obligation be, to submit to an award all controversies between *A.* and *B.* and an award is made that *A.* shall permit *B.* to enjoy certain leases of lands purchased from *J. S.* and that *B.* shall pay the rents, and perform the covenants, and deliver to *A.* a true copy of the  
leases

leases, and pay the arrears to the time of the purchase from *J. S.* this is a good award, as to the rents and covenants, though not particularly specified; for it is true, an award is to be interpreted by its own words, and not by any matter out of the award which doth not appear in the words; but when the words of an award have relation to things certain out of the award, these things may be averred; for that is the express mind of the arbitrators, which they have expressly referred to; but as to the arrears the award is void, because they have not referred to any matter that falls within the cognizance of *B.* for he cannot compel *A.* or *J. S.* to set the time of the purchase; and an award of what cannot be certainly done, is not a certain determination. 1 *Bac. Abr.* 142. 1 *Roll. Abr.* 264.

Awards must not be on one side only; this must be understood thus; That all controversies being between two parties, that which is awarded to be done to one, must be an advantage to both, so as to end the controversy, and discharge one as well as give satisfaction to the other, for if it doth not, it is manifestly unjust; and therefore whenever it appears to the court that, notwithstanding the award, the thing remains a duty as before, and is not discharged, that apparently is an award on one side, and consequently is void; not that where one party is by the award to have something paid him, or the like, and not the other, that that award should be naught; for perhaps nothing may be due to him, and he might be the only trespasser in the case. 1 *Roll. Abr.* 253. 8 *Co.* 98.

Thus in case of a trespass submitted, the arbitrators award that one shall pay the other 3 *l.* this is void, because only on one side; for it is not said for what, and so the trespass is not discharged; and then the other party hath no advantage by the award; but if it were awarded *de & super præmissis*, it would be well enough; likewise if the award had been, that he shall pay 3 *l.* for a trespass, it had been good, and yet one only was to do an act, but then the trespass by that award had been discharged. 1 *Roll. Abr.* 253, 254. *Hob.* 49.

*A.* and *B.* submit all actions had by *A.* against *B.* and all actions by *B.* against *A.* And the arbitrators award that *A.* shall go quit of all actions had by *B.* against him; this is naught, because they say nothing as to the other actions. 1 *Roll. Abr.* 253.

If the arbitrators award a thing impossible *ex natura rei*, it is void; but if they award a thing which cannot be done, but is not in the nature of the act itself contradictory or repugnant, this may be a good award; for there is no construction to be made of the award, but by the words thereof. 1 *Roll. Abr.* 248.

If an award be, that one shall make a feoffment to another of an acre, and immediately after deliver the charters, this is good, because they may be delivered in the same instant. 1 *Roll. Abr.* 248.

An award that a stranger shall do an act is void, because another in his natural freedom is not supposed within my power. 1 *Leon.* 316. 3 *Leon.* 62. *Hard.* 46.

An award to levy a fine is good; for though it is an act of the court, yet by the law and public justice of the kingdom, it is not to be refused

The award ought to be equal and mutually satisfactory.

to any man; but if the award be to command the justices to do it, this is no good award; for the parties in effect pray leave to agree from the king himself, which is quite different from the nature of a command.  
*1 Rol. Abr. 249.*

An award to pay so much *apud domum* *J. S.* good; for he is not bound to pay it in the house, but as near as he can to it, or it shall be intended a common inn; and if the party will not let him pay there, it has been said that the endeavour is sufficient; for they cannot award any thing that will make the party a trespasser. *1 Rol. Abr. 249. Cro. Car. 226. 2 Bulf. 39. 3 Lev. 153.*

The award  
must be final.

An award that all suits shall cease is a final award; so an award that one of the parties shall not sue an obligation; for this amounts to an extinguishment of the debt. An award that a suit *in Chancery* shall be discussed, a final award; so if the arbitrators award a *retraxit*, and award that one shall not prosecute nor proceed in such a term, seems to be good, but an award that one of the parties shall be nonsuit is not good, because the party may begin again; so that each party shall discontinue their actions which they have against each other; for this is not a final determination. *1 Bac. Abr. 147.*

A conditional award not good, because not final to determine matters in difference; the same law where any thing is referred to the arbitrators future judgment or exposition. *1 Bac. Abr. 147.*

If the arbitrators award general releases within four days after the award, and if in ten days after the releases so made the party dislike the award, upon payment of ten shillings, the award shall be discharged, here the award is good; and the proviso to make void the award after such releases, is altogether void and repugnant; for if the obligation be once forfeited by non-performance of the award, it can never be discharged by the award itself; but if the arbitrators award general releases within four days after the award; and if ten days after the award made the parties dislike the award, &c. the award shall be void, this award is not good, because not final and decisive; for the parties may dislike the award within the four days. *1 Bac. Abr. 147.*

If the arbitrators award that *A.* shall beg *B.*'s pardon in such manner, and such place as *B.* shall appoint, as to this part the award is void; for the arbitrators ought to have made a final determination of the matter themselves, and not to have left the manner and place of begging pardon, which in this kind of satisfaction makes the most considerable part, to the judgment of *B.* *1 Bac. Abr. 147.*

When the arbitrators award a thing not submitted, with a reservation to themselves of a future power of judging of the matter, and they award a thing within the submission, this is good for things within the submission; for as to that it is final, and void for the residue. *1 Bac. Abr. 147.*

If they arbitrate that all controversies shall cease, except that concerning one bond, this is final; for as to the bond they arbitrate that it shall continue in force. *1 Bac. Abr. 147.*

In an action of trespass for an assault, battery, and false imprisonment, an award (made pending the action) being pleaded to this action, and a tender of the sum awarded; the plaintiff demurred. The award (which was made upon a submission of all disputes, &c.) was in these words,—“Whereas there has been a suit at law between the parties, that has run to a great expence on both sides; and it being left to me to make an end of it; I determine That they shall each of them pay their own charges at law; and that the defendant pay the plaintiff five shillings, for his making the first breach in the law.” Mr. *Anguish pro quer* objected to the award, as being 1st, *Uncertain*; 2dly, *Not final*. First.—It is *uncertain*. The submission is of *several* matters: and the award does not at all shew, *which* of them it means to determine. 1 *Ro. Abr.* 242. Letter *B. pl.* 1. 252. *pl.* 10. And an averment without a fact to support it is of no avail. 1 *Ld. Raym.* 246. in the case of *Bacon v. Dubarry*, the 4th resolution is expressly so. This is an action of trespass. The submission is of *all* trespasses. And the award does not distinguish *what* trespasses it determines. 1 *Ro. Abr.* 251. Letter 1. *pl.* 1. and *pl.* 3. and the case of *Maw v. Samuell* in *Popham* 134. and 2 *Ro. Rep.* 1: the case of *Bacon v. Dubarry* (before cited.) The 3d resolution says, “That the award was void for the uncertainty, without releases.” Now *here* are *no* releases. Each is to pay their own charges: and the defendant is awarded to pay to the plaintiff 5 s. for his (the defendant’s) having been guilty of the first breach of the law. The injury complained of was assault, battery, and false imprisonment. And here is no satisfaction awarded for the injury. 1 *Ld. Raym.* 247. The case of *Freeman v. Bernard*. Second point—’Tis *not final*. Which it ought to be. An award must be *final*. But this award was made pending the action: And it does not put any end to it, at all. Under this head, He cited 1 *Ro. Abr.* 252. *pl.* 16, 17. [But one of these is marked by the abridger, “*Dubitatur*”: The other “*Contra* 15 H. 7. 22.”] Also 2 *Strange* 1024. The case of *Tipping v. Smith*: Where the award was held ill; being uncertain, and not final. And *Cro. Eliz.* 904. The case of *Colston v. Harris*: Where the award was holden void; because nothing was awarded to the defendant, nor to be free from the suits: So no advantage to him.

Mr. *Caldecot contra pro def.* This award is pleaded by consent of the plaintiff, and by leave of the court. And though pleaded as being made pending the action, *viz.* between the action brought and the plea pleaded, yet the court will determine upon the mere validity of it. 1st, It does appear upon what particular suit the award was. The generality of the submission is not inconsistent with the particularity of the award. 8 *Rep.* 98. *b.* *Baspole’s* case. [2d resolution.] This shall be taken to be the *whole* matter depending between the parties: And *no other* suit than this appears to have been depending between the parties. The case of *Bacon v. Dubarry*, in 1 *Ld. Raym.* 246. is not like or similar to the present case. After payment made or tendered, the action of trespass is discharged. *Hob.* 49. The case of *Nicholls v. Grunnion* is expressly

Awards are now considered with less strictness than formerly; yet they must be certain and final. 1 *Bur. Rep.* 274. *East.* 30 *Geo.* 2. *Hawkins v. Colebough.*

so. [The words are "For a *satisfaction* implies a discharge."] The present award (which was made by a *cobler*) recites that there was such a suit; and that it being left to him to make an end of the said suit, he determined as follows, *viz.* "That the said *J. H.* and *J. C.* should each of them *pay their own costs and charges at law*; and that the said *J. C.* should *pay the said J. S. 5 shillings for his making the first breach in the law.*" And this may be pleaded in bar, in another action. The arbitrator certainly intended to make an end of this suit depending between the parties; and thought *5 s. adequate to the injury.* Mr. *Anguish* in reply—Notwithstanding the consent "to plead this award in bar," Yet all objections to the award itself are still open.

This is *not shown* to be the *only* matter between them: And *non constat* that the award was made concerning this *particular* action. I agree that *payment* discharges the trespass. But then it ought to appear that the payment was in satisfaction of the same *trespass*; which does not appear in this case.

Lord *Mansfield*:—The question is whether this be a *good award*. Awards are now considered with greater latitude, and less strictness than they were formerly. And 'tis right that they should be liberally construed, because they are made by judges of the parties own choosing. And this is often, (as it is here,) in cases of small consequence, where the play is not worth the candle. Indeed they must have these two properties, to be *certain*, and *final*. But the certainty may be judged of according to a common intent, and consistent with fair and *probable presumption*. This submission is, in general terms, "of *all* actions, controversies and suits between them." The arbitrator recites one; referring to the submission, as authorising him to determine it: And it appears that *this* suit was depending between the parties. And the parties have *not desired to be heard* upon any more than *this one*. Therefore there is *no probable presumption* of any other. 2dly, As to its being *final*—It seems to be a reasonable and fair award. The arbitrator, plainly, thought it a mere trifle; and seems to have thought *both* parties to have been in the wrong; and therefore awarded each to stand by his own costs. And the *5 s.* awarded to be paid, is plainly in *satisfaction* of this *same* action; and therefore is a *discharge* of it, being paid or tendered. And he declared against critical niceties, in scanning *awards* made by judges of the parties *own choosing*, in order to the determination of disputes between them. Therefore he was clear, that the judgment ought to be for the defendant.

Mr. *Just. Denison* concurred—The submission is *general*: The arbitration is alledged to be "*de et super præmissis*"; and it *does not appear* that *any thing else* was before the arbitrator. It's plain that *this* matter was submitted: and we have no reason to *presume* "that there was any other. And it is *sufficiently final*; it is to pay *5 s.* for having been guilty of the first breach of the law. Therefore it is the *same*, as if it had said "in satisfaction," Therefore it is mutual and final. And *awards* ought to be construed *liberally* and *favourably*. Mr. *justice Foster* concurred, for the reasons already given. Judgment for the defendant.

After

After an unsuccessful motion, made on the part of the defendant, "to set aside an award;" and an equally unsuccessful one, made on the part of the plaintiff, "to enforce it by an attachment for non-performance;" The plaintiff found himself obliged to have recourse to his *action* against the defendant upon it. And now upon an action of debt brought by him on this award, reciting that in an action of assumpsit, the parties, at the trial, had submitted *the matters in difference in the said cause*, to certain arbitrators, &c. so as they should publish their award in writing concerning the premisses, before, &c. And that they accordingly did publish their award in writing, &c. And awarded "that the defendant *Nicholson* should pay to the plaintiff *Perry* 48 l. 11 s. 4 d. in full payment, discharge, and satisfaction of all moneys whatsoever, or any ways due or owing unto *Perry*, by *Nicholson*, at the time of commencing the said action; and that all actions depending between them for *any matter, cause or thing whatsoever*, arising before or at the time of referring, should *from thenceforth cease*; and that upon payment of that sum, they should within two days after the *taxation* of costs in the action, and payment thereof to *Perry*, seal and execute to each other, *general releases* of all matters in difference in the said cause." Then the plaintiff avers that there was, at the commencement of the action, or at the time of reference, *no other money* whatsoever any ways due to him the said plaintiff *Perry* from *Nicholson*, but the matter in difference in the said cause; and that *no other action* was depending between them; and that the costs were *taxed* at 28 l. The defendant pleads "that no such award was made." Replication - "that there was such an award, &c." And issue thereupon. The plaintiff gave in evidence, an award in writing, *indented*, under the hands and seals of the said arbitrators, named in his declaration and replication, with the following *variations* from, and additions to the award set forth in the declaration,—*viz.* There was in the declaration, 1st, An *omission* (after the award "to pay, &c.") of these following words:—"That *Nicholson* at the same time *deliver up* to *Perry* a *promissory note* of *Perry's* payable to *Nicholson* or order, for 5 l. 7 s. to be cancelled." 2dly, A *misrepresentation* of the release: Which is "that they should execute *MUTUAL and general releases* of all actions, &c. debts, &c. for any matter, cause, or thing whatsoever, from the beginning of the world *unto the day of the date* hereof." 3dly, The award produced in evidence, is by deed *indented, under hand and seal*: Whereas the award declared upon is only an award "in writing," merely. Upon this evidence, there was a verdict for the plaintiff, subject to the opinion of the court, on this question,—“Whether there be *MATERIAL variances* between the award declared upon and the award given in evidence.”

Mr. serjeant HEWITT, — *pro quer.* This action is an action of debt on *the AWARD* itself; not an action of debt on the arbitration BOND: And on *such* an action, no more needs be set out, than is material, and enough to intitle the plaintiff to his demand. 1 Leon. 72. the case of *Smith v. Kirfoot*. 1 Salk. 72. the case of *Foreland v. Marygold*. Both which cases are

In an action of debt upon the award itself, the plaintiff need not shew forth so much as he must have done, if he had brought it upon the arbitration bond. 1 Bur. Rep. 278. East. 30 Geo. 2. *Perry v. Nicholson*.



are expressly so. Another rule concerning awards is, that the *generality of the words* of them may be *restrained*, so as to be construed to amount to no more than they ought to amount to. One way of doing this, is by *averment* connecting the award with the submission: As it is said in the case in *Aleyn* 51, 52. *Rose v. Spark* [first point,] “That the words *de præmissis* have been newly used in pleading awards: in order properly to apply the general words proportionable to the things submitted.” Another way of doing this, is by pleading them according to their *legal operation*. Another way of restraining the generality of words is by *intendment of law*: As was done in 1 *Salk.* 74. *Simon v. Gavil.* Another way is by *pleading the matter*; (which is the proper way for the defendant to take advantage of it;) as in *Moore* 885, N<sup>o</sup>. 1242. The case of *Lee v. Paine.* Another way is, that an award may be *good in part, and bad in part*; if relative to distinct things. To apply these positions.—Here are four things awarded: which, it is true, are not all particularly set forth. But ALL that is NECESSARY to THIS *suit*, is set forth: The *other* things are not relative to it. And here is an *averment* “That no other thing was in dispute.” The question is, “Whether this award produced in evidence proves the declaration. Now all that is material in the declaration, upon *this* action of debt upon the award, is the award of the 48*l.* and the 28*l.* costs. So that it is sufficient to prove the declaration.

Mr. ANGUISH *contra pro. def.* 1st, Here is an *omission* of that part which obliges the defendant *Nicholson* to deliver up a note: Which note composes part of the sum, and was in consideration to make up the 48*l.* To suppose it otherwise, is inconsistent: Because, otherwise they would not have ordered it to be given up. He cited 2 *Lev.* 235. The case of *Adams and Statbam*: Where an omission vitiated the award.

LORD MANSFIELD, after stating the case, said that nothing was clearer, than that in an action of debt UPON *an* AWARD, a man has *no* need to *state in his declaration any more* of the award, than supports his case. If there be any thing by way of condition precedent to the payment of the money, the *defendant* may *set it out* in pleading. This has been the law, so long ago as from the time of the Register: where there is a writ which sets forth only so much as is necessary. [V. *Register* 111.] Then with regard to the release.—The court will *intend* that the *release* shall *extend only to the matter under the submission*. Besides here they have averred “That there was *no other* matter in variance.” Therefore I think there is *no material variance* between the declaration and the evidence.

Mr. Justice DENISON—was clearly of the same opinion: which he declared to the following effect. The question is “Whether the award given in evidence is sufficient to support the award set forth in the declaration.” Now nothing is claimed by *this* action, *but* the money. And the question is, whether it was necessary, in this action, to set forth any thing MORE than supported his claim to recover, and shewed his right to this money. It has been settled that in actions UPON AWARDS (which are no specialties,) there is *no* occasion to set forth the whole award. The plaintiff needs not shew any thing more than what is necessary

necessary to support that *particular* claim; and to intitle him to the *thing*; and if the defendant will *impeach* the award for any thing, *that* is to come on his part. 1 Leon. 72. *Smith and Kirfoot's* case is expressly so resolved. *Littleton's Rep.* 312, 313. *Leak v. Butler*, is a like resolution: Where the form of declaring is said to be taken from a writ in the *Register* 111. And this *distinction* between debt upon the *award* itself, and debt upon the arbitration bond, was admitted in 1 Salk. 72. the case of *Foreland and Marygold*: which was an action of debt upon *bond* to perform an award. And 1 Lord Raym. 715. *Foreland and Hornigold* is the same case: Where also it appears to have been an action of debt upon the *bond*. Here, the award is, "That *Nicholson* shall pay the money, and *Perry* deliver up the note." And this is an action of debt brought by *Perry*, upon *this* AWARD, for the *money*. It would, as I have already said, have been a quite different case, if it had been an action upon the *arbitration* BOND. But it is *here* good, even though on the mere face of the declaration it should appear as a *bad* award, by appearing thereupon, and as there set forth, as if it were only an award on one side. For the plaintiff, in *this* action upon the award itself, needed only to shew *such* part as he grounded his action upon. Then as to the *Release*.—The award "of *general* releases," was *void*, as to OTHER matters not submitted. Here nothing is submitted, but in *this* particular action. And in an action upon the bond, "a release as to *all* matters under submission," would be a good plea; though the award be an award of "*general* releases." But here it is *expressly averred*, "that there were NO OTHER matters in dispute." However, there was no occasion for that averment, because we *would* NOT *have intended* "that there were any other."

Mr. Justice FOSTER was of the same opinion. He said it was sufficient in an action of debt upon the AWARD ITSELF, to set forth so much only as is necessary to support the plaintiff's claim. The *other* part of the award, may, perhaps, *be performed*. He thought therefore, that the evidence well proved the declaration. *Per cur.* unanimously (Mr. Justice Wilmot absent) Let the POSTEA be delivered to the PLAINTIFF.

## Badgers.

**B**ADGER is derived from the *French* bagage, baggage or luggage, and signifies a person who is licensed to buy corn or other victuals in one place, and carry them to another. *Cowell. Termes de la ley.*

Stat. 5 & 6 Ed. 6. c. 14. [*A. D.* 1552. *Intituled*] "An act against 5 & 6 Ed. regrators, foretallers, and ingrossers." b. c. 14.

"Albeit divers good statutes heretofore have been made against fore- Who shall be  
tallers of merchandises and victuals, yet for that good laws and statutes judged a fore-  
against

staller, who against regrators and ingrossers of the same things have not been heretofore regrator, and sufficiently made and provided, and also for that it hath not been perfectly who an ingrosser; and known what person should be taken for a forestaller, regrator or ingrosser, and the punish- the said statutes have not taken good effect, according to the minds of the ment of them. makers thereof: (2) Therefore be it enacted and declared by the king our 25 Ed. 3. Stat. sovereign lord, with the assent of the lords spiritual and temporal, and the 4.c 3. 2 R 2. commons in this present parliament assembled, and by the authority of the Stat. 1. c. 2. same, that whatsoever person or persons, that after the first day of *May* next repealed as to coming shall buy, or cause to be bought, any merchandise, victual, or any buying sea-fish other thing whatsoever, coming by land or by water toward any market or by 5 Eliz. c. 5. fair to be sold in the same, or coming toward any city, port, haven, creek S. 11. 2 Bullit. or road of this realm or *Wales*, from any parts beyond the sea to be sold; 317. Godbolt (3) or make any bargain, contract or promise for the having or buying of 131. pl. 148. the same, or any part thereof, so coming as is aforesaid, before the said 3 Inst. 895, merchandise, victuals, or other things, shall be in the market, fair, city, 196. 12 Co. port, haven, creek or road, ready to be sold; (4) or shall make any motion 99. 1 Roll. 11, by word, letter, messuage or otherwise, to any person or persons, for the 194. 421. inhancing of the price, or dearer selling of any thing or things above- 2 Roll. 92, mentioned; (5) or else dissuade, move or stir any person or persons coming 400. Stile 190. to the market or the fair, to abstain or forbear to bring or convey any of the Moor 595. pl. things above rehearsed, to any market, fair, city, port or haven, creek 810. Cro. Jac. or road to be sold, as is aforesaid, (6) shall be deemed and taken, and 214. Cro. Car. adjudged for a forestaller. 231. 314. 2 Leon. 39. Comberb. 3. 1 Hawk. P. C. 237.

*Sett.* 2. "Further be it enacted and declared by the authority aforesaid, That whatsoever person or persons, that after the said first day of *May* shall by any means regrate, obtain, or get into his or their hands or possession, in a fair or market, any corn, wine, fish, butter, cheese, candles, tallow, sheep, lambs, calves, swine, pigs, geese, capons, hens, chickens, pigeons, conies, or other dead victual whatsoever, that shall be brought to any fair or market within this realm or *Wales* to be sold, and do sell the same again in any fair or market holden or kept in the same place, or in any other fair or market within four miles thereof, shall be accepted, reputed and taken for a regrator or regrators.

*Explained by* 21 Ja. 1. c. 22. S. 6. Jones 157. Bridgm. 5, 49. *Sett.* 3. "And be it also enacted and declared by the authority aforesaid, That whatsoever person or persons, that after the said first day of *May* shall ingross or get into his or their hands, by buying, contracting or promise-taking, other than by demise, grant, or lease of land or tithe, any corn growing in the fields, or any other corn or grain, butter, cheese, fish, or other dead victuals whatsoever, within the realm of *England*, to the intent to sell the same again, shall be accepted, reputed and taken an unlawful ingrosser or ingrossers.

*The punish- ment of the offenders a- fforeid for the first offence.* *Sett.* 4. "And if any person or persons shall, at any time after the said first day of *May*, offend in any of the things before recited, and being thereof duly convicted and attainted by the laws of this realm, or after the form hereafter mentioned, shall for this or their first offence have or suffer imprisonment for the space of two months without bail or mainprife, (2) and

(2) and shall also lose and forfeit the value of the goods, cattle and victual so by him or them bought or had.

*Stat. 5.* “ And if any person, lawfully convicted or attainted of or for any The punishment for the second offence.  
the offences aforesaid, be thereof estfoons lawfully convicted or attainted, that then every person or persons so offending shall have and suffer for his or their said offence, imprisonment by the space of one half year, without bail or mainprife, and shall lose double the value of all the goods, cattle and victual so by him bought or had, as is aforesaid.

*Stat. 6.* “ And if any person, being lawfully twice convicted or attainted The punishment for the third offence.  
of or for any of the said offences, shall estfoons offend the third time, and be thereof lawfully convicted or attainted, that then every such person for the said third offence shall be set on the pillory in the city, town or place where he shall then dwell and inhabit, and lose and forfeit all the goods and cattle that he or they have to their own use, and also be committed to prison, there to remain during the king’s majesty’s pleasure.”

*Stat. 7.* “ Provided alway, and it is enacted and declared by the authority aforesaid, That the buying of any such barley, bigg or oats, as any person or persons (not forestalling) shall buy to convert into malt or oatmeal, in his or their own house or houses, and so shall be converted indeed, (2) or the buying of any such thing by any such fishmonger, butcher, or poulterer, as concern his or their own faculty, craft or mystery, (otherwise than by forestalling) which shall sell the same again upon reasonable prices by retail; (3) or the taking of any cattle, corn, grain, butter, cheese, or any other thing above mentioned, reserved without fraud or covin upon lease for term of life or lives, year or years, heretofore made or hereafter to be made; (4) or the buying of any wine or other dead victual above mentioned, being apt and meet for man’s sustenance, by any inn-holder or other victualler, to sell the same by retail within his house, or to any of his neighbours for their sustenance, for reasonable prices; (5) or the buying of any dried or salted fish, herring or sprats (not forestalled) and sold for reasonable prices; (6) or the buying of any corn, fish, butter, or cheese, by any such badger, lader, kidder or carrier, as shall be assigned and allowed to that office or doing, by three justices of the peace of the county where the said badger, lader, kidder or carrier shall dwell, which shall sell or deliver in open fair or market, (7) or to any other victualler, or to any other person or persons, for the provision of his or their house or houses, all such corn, grain, butter and cheese as any such person shall buy or cause to be bought, and that within one month next after he shall so buy any such corn, grain, butter or cheese, so that the same shall be bought without forestalling; (8) or else that any common provision made, or hereafter to be made without fraud or covin, by any person or persons, of any of the things aforesaid, for any city, borough or town corporate, or for provision of victualling of any ship, castle or fort within the king’s dominions, without forestalling, which shall be employed only to that use and purpose; (9) or the buying and providing of any of the victuals above mentioned, necessary and requisite for the furniture and provision of the inhabitants of *Calice, Guisnes*, and other the marches of the same, or of the town of *Berwick, Holy Island*, or

To what retailing or other acts this statute doth not extend. Godbolt 144. pl. 180. 1 Roll. 135.

Badger, &c. to be allowed by the quarter sessions &c. by 5 Eliz. c. 12. f. 4.

the marches of *England* against *Scotland*, which without fraud or covin shall be transported and conveyed as soon as wind and weather may serve, to such of the places aforesaid for the which the same shall be provided, (10) shall not be in any wise deemed, adjudged or taken any offence contrary to this act.

Changing of  
feed-corn.  
2 Brownl. 108.

Sec. 8. "And it is also further enacted by the authority aforesaid, That if any person or persons after the said first day of *May* next coming, having sufficient corn, and grain for the provision of his or their own house or houses, and sowing of their grounds for one year, do buy any corn in any fair or market, for the change of his or their feed, and do not bring to the same fair or market the same day so much corn as he shall fortune to buy for his seed, and sell the same, if he can, as the price of corn then goeth in the said market or fair, that then every such person or persons for buying corn for feed, shall forfeit and lose the double value of the corn so bought.

No person  
may sell his  
cattle within  
five weeks af-  
ter be bought  
them. Car-  
thew 465.  
1 Salk. 372.

Sec. 9. "Or if any person or persons after the said first day of *May* shall buy any manner of oxen, ronts, steers, kine, heifers, calves, sheep, lambs, goats, or kids, living, and sell the same again alive, unless he or they do keep and feed the same by the space of five weeks in his or their own houses, ground, ferm-ground, or else in such ground or grounds where he or they have the herbage or common of pasture by grant or prescription, That then every person or persons so buying and selling again, shall lose the double value of the cattle or things so bought and sold again: (2) the one moiety of all which forfeitures afore rehearsed shall be to the king, and the other moiety to him or them that will sue for the same, in any of the king's courts of record, by bill, plaint, action of debt, or information; in the which bill, plaint, action or information, no wager of law, essoin or protection shall be admitted.

The justices of  
peace may in-  
quire, hear  
and determine  
the offences  
aforesaid.

Sec. 10. "Be it also further enacted by the authority aforesaid, That the justices of the peace in every county within this realm or *Wales*, at their quarter-sessions, shall have full power and authority by virtue of this act to enquire, hear and determine all and every the defaults and offences, perpetrated, committed or done contrary to this act, within the county where any such sessions shall be kept, by inquisition, presentment, bill, or information before them exhibited, and by examination of two lawful witnesses, or by any of the same ways or means, by the discretion of the said justices, (2) and to make process thereupon, as though they were indicted before them by inquisition, or by verdict of twelve men or more; (3) and upon the conviction of the offender by information or suit of any other than the king, to make extracts of the one moiety of the forfeitures to be levied to the king's use, as they used to do of other fines, issues and amerciaments grown in the sessions of peace, (4) and to award execution of the other moiety for the complainant or informer against the offender, by *fieri facias* or *capias*, as the king's justices at *Westminster* may do and use to do: (5) and if any such conviction or attainder shall hereafter happen to be at the king's suit only, that then the whole forfeitures to be extracted and levied to the king's use only."

Sec

*Señ. 11.* "And it is further enacted by the authority aforesaid, that whatſoever perſon ſhall at any time hereafter be puniſhed by virtue of this act, for any thing mentioned in this act; that then the ſame perſon ſhall not otherwiſe be vexed, troubled, ſued, or put to any pain or puniſhment for that thing wherefore he or they ſhall have been ſo puniſhed."

But one puniſhment for one offence.

*Señ. 12.* "Provided always, and it is enacted by the authority aforesaid, That it ſhall be lawful to every perſon or perſons, which ſhall be aſſigned and allowed by three juſtices of the peace of the county where he ſhall dwell, thereunto, to buy (otherwiſe than by foreſtalling) corn, grain or cattle, to be transported or carried by water from any port or place within this realm or *Wales*, unto any other port or place within the ſaid realm or dominions, if he or they ſhall without fraud or covin ſhip or embark within forty days next after he or they ſhall have bought the ſame, or taken covenant or promiſe for the buying thereof, and with ſuch expedition and diligence as wind and weather will ſerve to carry and transport the ſame to ſuch port or place, as his or their cockets ſhall declare, and there do diſbark, unlade and ſell the ſame, and do bring a true certificate thereof from one juſtice of peace of the county, or mayor or bailiff of the town corporate where the ſame ſhall be unladen, and alſo of the cuſtomer of the port where ſuch unloading ſhall be, of the place and day where the ſaid corn or cattle ſhall be diſbarked, unladen and ſold, to be directed unto the cuſtomer and comp-troller of the port where the ſame were embarked; any thing mentioned in this act to the contrary notwithstanding."

Transporting corn, &c. from one port to another by licences of the juſtices.

*Señ. 13.* "And over that, That at all times hereafter, when wheat ſhall be commonly at the price of 6*s.* 8*d.* the quarter, or under, (2) malt and barley at 3*s.* 4*d.* the quarter, or under, (3) oats, or oats malted, at the price of 2*s.* the quarter, or under, (4) peaſe or beans at the price of 4*s.* the quarter, or under, (5) and rye or miſteline at the price of 5*s.* the quarter, or under; (6) (all which quarters ſhall be intended to be of *London* meaſure) (7) that then it ſhall be lawful to every perſon and perſons (not foreſtalling) to buy, engroſs and keep in his or their granaries or houſes, ſuch corn of the kinds aforesaid, as without fraud or covin ſhall be bought at or under the prices afore expreſſed; any thing in this act to the contrary notwithstanding."

Every man may ingroſs corn being at theſe prices.

*Señ. 14.* "Provided always, and be it enacted by the authority aforesaid, That this act, or any thing therein contained, extend not to charge any perſon or perſons for any the offences above mentioned, unleſs he or they be ſued for the ſame within two years next after ſuch offence done or committed. This act to endure until the end of the next parliament."

Within what Time the offender muſt be ſued.

*Señ. 15.* "Provided always, and be it enacted by the authority aforesaid, That it ſhall be lawful to all and every of the king's majeſty's ſubjects now dwelling or inhabiting, or that hereafter ſhall dwell or inhabit within one mile of the main ſea, to buy all manner of fiſh, freſh or (ſalted, not foreſtalling the ſame) and to ſell the ſame again at reaſonable prices; this act, or any thing therein contained, to the contrary in any wiſe notwithstanding."

Regrating of Freſh fiſh. 4 Mod. 102.

Drovers of cattle licensed by the justices may buy and sell again.

Drovers to be allowed by the quarter sessions, by 5 El.c.12. f. 4.

*Stat. 16.* "Provided also, and be it enacted by the authority aforesaid, That it shall be lawful to all and every person and persons, known for a common drover or drovers, being licensed, authorised and allowed in writing by three justices of the peace, whereof one to be of the *quorum*, of the county or counties where the same drover or drovers shall be most abiding and dwelling, to buy cattle in any such shire or counties where drovers have been wont in times past accustomedly to buy cattle at their free liberty and pleasure, and to sell the same, as is aforesaid, at reasonable prices in common fairs and markets distant from the place or places where he or they shall buy the same, forty miles at the least, so that the same cattle be not bought by way of forestalling; this act, or any thing therein contained to the contrary in any wise notwithstanding.

*Stat. 17.* "Provided always, That such licence of justices of peace shall not indure above one year, unless the same be yearly renewed by so many justices as is aforesaid. *Made perpetual by 13 Eliz. c. 25.*

5 El. c. 12.

*Stat. 5 Eliz. c. 12.* [*A. D. 1562. Intituled.*] "An act touching badgers of corn, and drovers of cattle to be licensed."

Who shall be accounted an ingrosser by the statute of 5 & 6 Ed. 6. c. 14.

"Where in the session of parliament holden upon prorogation at *Westminster* the three and twentieth day of *January* in the fifth year of the reign of our late sovereign lord king *Edward* the sixth, amongst other things it was enacted, That whatsoever person or persons, after the first day of *May* then next ensuing, should engross or get into his or their hands, by buying, contracting, or promise-taking (other than by demise, grant, or lease of land, or tithes) any corn growing in the fields, or any other corn or grain, butter, cheese, fish, or other dead victuals whatsoever, within the realm of *England*, to the intent to sell the same again, shall be accepted, reputed, and taken an unlawful engrosser or engrossers; (2) with a proviso, and ordinance contained in the same act, That it should be lawful to every person or persons being a common badger, kidder, lader, or carrier which shall be licensed, assigned and allowed thereunto by three justices of the peace of the county where the said badger, lader, kidder or carrier shall dwell, which shall sell or deliver in open fair or market, or to any other victualler, or to any other person or persons for the provision of his or their house or houses, all such corn, butter, or cheese, as any such person or persons shall buy or cause to be bought, and that within one month next after he or they shall so buy any such corn, grain, butter, or cheese, so that the same shall be bought without forestalling, shall not be in any wise deemed, adjudged or taken any offence contrary to the said act.

A proviso for a badger, carrier, &c. licensed.

A proviso for a drover of cattle, or for buying of corn to be transported from one port to another.

*Stat. 2.* "And where also it is provided and enacted by the same act of parliament, That it shall be lawful to all and every person and persons known for a common drover or drovers, being licensed, authorised and allowed in writing by three justices of peace, whereof one to be of the *quorum*, of the county or counties where the same drover or drovers shall be most abiding and dwelling, to buy cattle in such shires or counties where drovers have been wont in times past accustomedly to buy cattle, at their

their free liberty and pleasure, and to sell the same again; (2) and that it shall be lawful to every person and persons which shall be assigned and allowed by three justices of the peace of the county where he shall dwell, to buy (otherwise than by forestalling) corn, grain, or cattle, to be transported or carried by water from any port or place within this realm or *Wales*, unto any other port or place within the said realm or dominions, as in the said act, amongst other things, doth appear."

*Sett.* 3. "Since the making of which act, such a great number of persons seeking only to live easily, and to leave their honest labour, have and do daily seek to be allowed and licensed to the said offices or doings, being most unfit and unmeet for those purposes, and also very hurtful to the commonwealth of this realm, as well by the inhauncing of prices of corn and grain, and other the said victuals, as also by the diminishing of the number of good and necessary husbandmen; which said number of drovers of cattle, and badgers, laders, kidders, and carriers of corn and grain, are many times without good orders, and due consideration, assigned and allowed thereunto, to the great prejudice of the commonwealth."

The inconveniences ensuing the number of drovers of cattle, and badgers, &c. of corn and other victuals.

*Sett.* 4. "In consideration whereof, Be it enacted by the queen our sovereign lady, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That no drover of cattle, badger, ladder, kider, carrier, buyer or transporter of corn or grain, butter and cheese, be from and after the feast of *Easter* next after the first day of this present parliament, licensed, admitted, assigned or allowed to those offices or doings, or to any of them, but only in the general and open quarter-sessions of the peace, to be holden in the shire where such person or persons so to be admitted, assigned or allowed, doth or shall dwell, and hath or shall have dwelled there by the space of three years next before the teste of his said licence. (2) And that no person or persons, after the first day of *May* next coming, be admitted to the said offices or doings, or to any of them, but such only as be or have been married men, and shall be, at the time of such licence to be granted, householders, and not household servants, nor retainers to any person or persons, and of the age of thirty years at the least: (3) and that all licences being made and granted, as is above said, shall have continuance and be good only for one year next after the date hereof, and for no more nor longer time.

To what kind of persons, and at what places only, licence shall be granted to be badgers, drovers, &c. Savill 58.

*Sett.* 5. "Which said licences, and every of them, shall bear date of the day and place where the said sessions shall be holden, and shall be signed and sealed with the proper hands and seals of three of the said justices of the peace, being present at the same sessions, at the least; whereof one to be of the *quorum*; (2) upon pain that every person or persons that shall take any licence contrary to this ordinance, to lose and forfeit to our sovereign lady the queen, her heirs and successors, five pounds sterling: (3) And that all licences made and granted, or hereafter to be made and granted, otherwise than is before expressed, shall from and after the said first day of *May* next coming be void and of none effect.

The date of the licences, and the justices hands and seals.

*Sett.*



Bonds with  
sureties shall  
be taken of  
drovers, car-  
riers, &c.  
not to infringe  
this act.

The fees of  
the clerk of  
the peace.

None shall  
buy corn to  
sell again  
without spe-  
cial licence.

Who shall  
have the for-  
feitures.

Justices of  
peace in their  
sessions shall  
enquire of,  
and deter-  
mine these  
offences.

*Seet. 6.* “ And further, Be it enacted by the authority aforesaid, That the justices of the peace, in the said general and open sessions, shall or may by their discretions, take bond and surety from time to time by recognizance, of such as shall be admitted or allowed hereafter a common drover of cattle, badger, lader, kidder, carrier or buyer of corn, grain, butter or cheese, that they or any of them shall not by colour of his or their licence, forestal or ingross, or otherwise practise or do any act or thing contrary to the tenor and true meaning, or in defrauding the said former estatute, or of any matter or thing therein contained: (2) All which licences, and every of them, and the said recognizances, shall be made and written by the clerk of the peace of every county where such licence shall be granted, or by his lawful deputy, and by none other person or persons: (3) And every person that shall have any such licence, shall pay to the clerk of the peace, or his deputy, for making thereof, twelve pence at the most; and for every recognizance in form aforesaid, to be made and acknowledged, eight pence at the most; and for registering of the same licence and recognizance, four pence at the most: (4) For which said fee, the said clerk, or his deputy, shall have and keep one register-book, and therein shall register and write all the names, surnames, and dwelling-places of such as shall be licensed, as aforesaid, with a brief declaration or entry of the said licence, and of the day, time and place where such licence or licences shall be granted: (5) Which book or register the said clerk of the peace, or his deputy, shall have and bring to every sessions, to the intent that it may appear what number of licences be and shall be from time to time granted, whereby the better consideration may be had thereof.

*Seet. 7.* “ Provided always, and be it further enacted by the authority aforesaid, That no person or persons, shall or may, by authority of any such licence above-mentioned, buy any corn or grain out of open fair or market to sell again, unless such person and persons shall be thereunto licensed, and shall have special and express words contained in such licence or licences, that he or they may so do; upon pain to forfeit for every such time that any such person or persons shall do to the contrary, five pounds: (3) The moiety of which forfeitures afore-rehearsed shall be to the queen our sovereign lady, her heirs and successors, and the other moiety to him or them that will sue for the same in any of the queen's courts of record, by bill, plaint, action of debt or information, in the which bill, plaint, action or information, no wager of law, essoin or protection shall be admitted.

*Seet. 8.* “ Be it also enacted by the authority aforesaid, That the justices of peace in every county within this realm or *Wales*, at the quarter-sessions, shall have full power and authority by virtue of this act, to enquire, hear and determine all and every the defaults and offences perpetrated, committed or done contrary to this act, within the county where any such sessions shall be kept, by inquisition, presentment, bill or information before them exhibited, and by examination of two lawful witnesses, or by any of the same ways or means, by the discretion of the said justices, and

to

to make process thereupon, as though they were indicted before them by inquisition, or by verdict of twelve men or more: (2) And upon the conviction of the offender, by information or suit of any other than the queen, to make extracts of the moiety of the forfeitures to be levied to the queen's use, as they use to do of other fines and amerciaments grown in the sessions of peace, and to award execution of the other moiety for the complainant or informer against the offender, by *feri facias* or *capias*, as the queen's justices at *Westminster* may do, and use to do; (3) and if any such conviction or attainder shall hereafter happen to be at the queen's suit only, and then the whole forfeitures to be extracted and levied to the queen's use only.

*Señ. 9.* " Provided always that this act, or any thing therein contained, shall not in any wise extend to the prejudice of the liberty of any city or town corporate, but that they and every of them shall and may lawfully assign and license purveyors for the provision of the same city or town corporate, in such manner and form as they might lawfully have done before the making of this act. A city, &c. may appoint purveyors for their provision.

*Señ. 10.* " Provided further, that this act, nor any thing therein contained, shall be in any wise hurtful or prejudicial unto any the inhabitants within the counties of *Westmorland, Cumberland, Lancaster, Chester* and *York*, or any of them, but that they may do as heretofore they have lawfully used to do; any thing in this present act to the contrary notwithstanding. To the inhabitants of which counties this statute doth not extend.

**Stat. 13 Eliz. c. 25.** [*A. D.* 1571. intituled, " An act for reviving and continuance of certain statutes." ] *señ. 1, 2, 3, 4, & 5.* recite the said act of 5 & 6 Ed. 6. c. 14. and four other acts. 13 Eliz. c. 25.

*Señ. 5.* " All which acts were by fundry acts of parliament continued in force and effect, until the end and dissolution of the last parliament [*8 Eliz. A. D.* 1566.] of our sovereign lady the queen's majesty that now is, at which time the same several acts, and every of them were discontinued, and lost their force and effects; which acts above-mentioned, and every of them, by proof and experience, have since the making of the same, been tried and found to be very necessary, beneficial and profitable for the commonwealth, and therefore are thought good to be made perpetual: Be it therefore enacted, " That the said acts above remembred, and every of them, and *all* and *every* the branches, clauses, and provisions in them and every of them contained, shall be revived, and from henceforth remain and continue in force and effect for ever."

*Señ. 20.* " Provided always, and be it enacted by the authority aforesaid, That no person or persons shall be a buyer, badger, kidder, or carrier of corn, cattle, butter, cheese, and such-like kind of victual, in none other manner nor form than is contained in a statute made in the fifth year of the reign of our sovereign lady queen *Elizabeth*, nor shall be any other ways admitted or licensed to be a buyer, badger, kidder, or carrier, as is aforesaid.

## Badgers.

aforesaid, than is mentioned and appointed by the said statute; any thing in *this*, or any other act heretofore to the contrary notwithstanding."

*For other matters, see Forestalling.*

## Bail.

**B**AIL, (*ballium*, from the French *bailler*, *tradere*, to deliver) is used in our common law for the freeing or setting at liberty of one arrested or imprisoned upon any action, either civil or criminal, on surety taken for his appearance at a day and place certain. *Bract. lib. 3. tract. 2. c. 8. num. 8 & 9.* The reason why it is called *bail*, is because by this means the party restrained is *delivered* into the hands of those that bind themselves for his forthcoming or appearance. *Cowell.*

Bail in criminal causes is regularly to be allowed in all such cases wherein it seems doubtful, whether the person accused be guilty of the offence or not; in which case, according to another general rule, it may be allowed and taken by that person who has cognizance of the crime, and therefore being judge of the offence, may, if he thinks fit, bail the offender. 2 *Inst.* 189. 2 *Hawk. P. C.* 93.

Difference between bail and mainprife.

*Bail* and *mainprife* are used promiscuously oftentimes for the same thing, and indeed the words import much the same thing; for the former is *traditus J. S.* and the other is *manucaptus per J. S.* But yet in a proper and legal sense they differ. 1st, Always mainprife is a recognizance in a sum certain, but bail is not always so. 2dly, He, that is delivered *per manucaptionem* only, is out of custody; but he that is bailed, is in supposition of law still in custody, and the parties that take him to bail are in law his keepers, and may reseize him to bring him in; and therefore if a man be let to mainprife, suppose in the *King's Bench*, an appeal or other suit cannot be brought against him as *in custodia marescalli*; but if he be let to bail, he is in supposition of law still *in custodia marescalli*. 3dly, Tho' sometimes the recognizances themselves both in bail and mainprife are in a sum certain, yet the entry on record in the one case is *deliberatur per manucaptionem*; and in the other case *traditur in ballium*. 2 *Hal. Hist. P. C.* 124, 125.

If a person be let to bail, yet he is in law in prison, and his bail are his keepers, and therefore the justices of gaol-delivery may take an indictment against him, as well as if he were actually in gaol, but he that is let to mainprife is not in custody. 2 *Hal. P. C.* 35.

Who are bailable or not bailable.

Regularly in all offences, either against the common law or acts of parliament, that are below felony, the offender is bailable, unless 1st, he hath had judgment. 2dly, Or that by some particular or special act of parliament bail is ousted. 2 *Hal. H. P. C.* 127.

The

The statute 3 *Ed. 1. c. 15.* declares, who areailable and who not, as well in other cases, as in cases capital. But this statute doth not extend to justices of the peace, for they were not in being till 1 *Ed. 3.* and therefore the statute 1 & 2 *P. & M. cap. 13.* makes the statute of 3 *Ed. 1. c. 15.* a direction to justices touching the bailing of offenders. 2 *Hal. H. P. C. 127, 128.*

**Stat. West. 1.** (3 *Ed. 1.*) *c. 15.* [*A. D. 1275. intituled*] “ Which pri- 3 *Ed. 1. c. 15.* soners be mainpernable, and which not. The penalty for unlawful bailment.”

“ And forasmuch as sheriffs, and others, which have taken and kept in prison persons detected of felony, and incontinent have let out by replevin such as were not replevifable, and have kept in prison such as were replevifable, because they would gain of the one party, and grieve the other; (2) and forasmuch as before this time it was not determined which persons were replevifable, and which not, but only those that were taken for the death of man, or by commandment of the king, or of his justices, or for the forest; (3) it is provided, and by the king commanded, That such prisoners as before were outlawed, and they which have abjured the realm, provors, and such as be taken with the manner, and those which have broken the king's prison, thieves openly defamed and known, and such as be appealed by provers, so long as the provers be living (if they be not of good name) and such as be taken for house-burning feloniously done, or for false money, or for counterfeiting the king's seal, or persons excommunicate, taken at the request of the bishop, or for manifest offences, or for treason touching the king himself, shall be in no wise replevifable by the common writ, nor without writ: (4) But such as be indicted of larceny, by enquests taken before sheriffs or bailiffs by their office, or of light suspicion, or for petty larceny, that amounteth not above the value of 12*d.* if they were not guilty of some other larceny aforetime, or guilty of receipt of felons, or of commandment, or force, or of aid in felony done, or guilty of some other trespass, for which one ought not to lose life nor member, and a man appealed by a prover after the death of the provor (if he be no common thief, nor defamed) shall from henceforth be let out by sufficient surety, whereof the sheriff will be answerable, and that without giving ought of their goods. (5) And if the sheriff, or any other, let any go at large by surety, that is not replevifable, if he be sheriff or constable, or any other bailiff of fee, which hath keeping of prisons, and thereof be attainted, he shall lose his fee and office for ever. (6) And if the under-sheriff, constable, or bailiff of such as have fee for keeping of prisons, do it contrary to the will of his lord, or any other bailiff being not of fee, they shall have three years imprisonment, and make fine at the king's pleasure. (7) And if any withhold prisoners replevifable, after that they have offered sufficient surety, he shall pay a grievous amerciamment to the king; (8) and if he take any reward for the

What sort of offenders be not mainpernable. 1 *Rol. 134, 192, 268.* Bro. Mainprife, 11, 56, 78. Fitz Mainprife, 1, 32, 40. Bro. Mainprife, 54, 57, 59, 60, 75, 78, 91. 11 *Co. 27.* Bro. Main. 6, 9, 19, 22, 30, 48, 50, 51, 53, 58, 63, 64, 73, 91, 94, 97. What sort of offenders be mainpernable. 2 *Bulstr. 528.* 3 *Bulstr. 113.*

The penalty for unlawful mainprife.

The penalty for detaining a prisoner that is mainpernable.

27 Ed. 1.  
 stat. 1. c. 3.  
 3 H. 7. c. 3.  
 1 & 2 Ph. &  
 M. c. 13.  
 2 Inst. 184.

deliverance of such, he shall pay double to the prisoner, and also shall be in the great mercy of the king."

*Sheriffs and others*] The words (*sheriffs and others*) intend sheriffs and gaolers that have custody of gaols, so as this act extends not to any of the King's justices, or judges of any superior courts of justice; 1st, For that they being superiors are not comprehended in the general words, as often hath been observed; 2dly, (Who have taken and kept in prison) which judges do not; 3dly, Because in those days prisoners were commonly bailed by the King's writ *de homine repleg'*, and then also by the writ *de odio & atia*, both which were directed to the sheriff. 2 Inst. 185, 186.

*Felony*] In those days *felony comprehended* in it as well *treason*, as homicide, rape, or burglary, robbery, arsons, and all larcenies and thefts. 2 Inst. 186.

*And have kept in prison*] Here it is proved, that it is an offence as well to bail a man not bailable, as to deny a man a bail that ought to be bailed; and the reason is yielded wherefore the sheriffs and others did so offend, because they would gain of the one, and grieve the other, viz. either for avarice or for malice. 2 Inst. 186.

*Not determined*] It was not certainly determined what people were repleviable and what not, within the general words of the writ *de homine repleg'*. 2 Inst. 186.

*Replevisable*] This word (*replevisable*) proves that this act intends what persons were to be replevied by the common writ *de homine replegiando*, which was directed to the sheriff under whose custody the prisoners are, and of whom this act speaks, and so it appears by the Register; and replevy or plevy, is applied to the sheriff to take pledges and bail to the highest courts of record; and the writ *de manucapione* directed to the sheriff, is grounded upon this act, in which writ not only *replegiare* but *manu capere* also is used. 2 Inst. 186.

*Death of a man*] Here our act first sets down, what persons were not bailable for certain offences by the common writ *de homine repleg'*, and they are in number four; but by the ancient law of the land, in all cases of felony, if the party accused could find sufficient sureties, he was not to be committed to prison; but afterwards it was provided, that in case of homicide, the offender was not bailable. 2 Inst. 186.

*By commandment of the King*] The words (*by command of the King*) are as much as to say (as some affirm) by the King's courts of justice; for all matters of judicature and proceedings in law are distributed to the courts of justice, and the King does judge by his justices, 8 H. 4. fol. 19. and 24 H. 8. cap. 12. and regularly no man ought to be attached by his body, but either by process of law, that is (as has been said) by the King's writs, or by indictment, or lawful warrant, as by many acts of parliament is manifestly enacted and declared, which are but expositions of *Magna Charta*, and all statutes made contrary to *Magna Charta*, which is *lex terræ*, from the

the making thereof until 42 Ed. 3. are declared and enacted to be void ; and therefore if this act of *Westm.* 1. concerning the extra-judicial commandment of the King, be against *Magna Charta*, it is void ; and all resolutions of judges concerning the commandment of the King, are to be understood of judicial proceedings. 2 *Inst.* 187.

*Or of his justices*] The words (*or of his justices*) intend, upon any cause, whereof they are judges, appearing to them. 2 *Inst.* 187.

*Or for the forest*] But as to imprisonment for offences, the law hath been much mitigated by later statutes. 2 *Hawk.* 98. And all these four are particularly excepted out of the common writ *de homine replegiando*, that the sheriff in his county court, which is not a court of record, shall not replevy any of these four that are committed ; for example, tho' the party be committed by the personal command of the King, albeit the commitment be unlawful, yet the sheriff shall not deal therein by the writ *de homine replegiando* ; but the superior courts at *Westminster*, upon a *habeas corpus* ; &c. shall do justice to the party in all these four cases ; so as *Stamford*, being well considered, impugneeth not in any sort this opinion ; for his opinion extends only to the county court upon the writ *de homine replegiando*, and not to the superior courts. 2 *Inst.* 187.

*Outlawed*] Persons outlawed are attainted in law, and therefore are not replevisable, or to be bailed ; for if a man be arraigned of homicide, and pleads not guilty, and is found guilty ; and for difficulty of clergy is replevied, it was resolved by the justices that he was not bailable ; for the intendment of the law in bails is *quod stat indifferenter*, whether he be guilty or no ; but when he is convicted by verdict or confession, then he must be deemed in law to be guilty of the felony, and therefore not bailable at all ; *a fortiori*, when the party is attainted in law. 2 *Inst.* 187, 188.

And yet if the party upon the *cap. utlag.* plead *misnomer*, or allege error, &c. he may be bailed. 2 *Inst.* 188.

*Abjured the realm*] Persons having abjured, are also attainted upon their own confession, and therefore not bailable at all by law. 2 *Inst.* 188.

*Provers*] The reason whereof provers or approvers be not bailable, is ; for provers do first confess the felony to be done by themselves, and therefore they are not bailable, because it appears that they be guilty of the fact. 2 *Inst.* 188.

*Taken with the manner*] For in this case *non stat indifferenter*, as hath been said, whether he be guilty or no, being taken with the manner, or *mainer*, that is, with the thing stolen, as it were in his *band*, anciently called *handhabeind* ; the like is anciently called *backberind*, as a bundle or fardle at his back, which *Bracton* uses for a manifest theft *furtum manifestum* ; and so doth *Britton*. 2 *Inst.* 188.

*Broken the King's prison*] Here are two offences, 1st, His breaking of the prison ; for it is presumed, that he that is innocent will never break prison ; and 2dly, His flying, *quia fatetur facinus, qui judicium fugit*. 2 *Inst.* 188.

*Appealed by provers*] The appeal of the approver is forcible against the appellee, because the approver confesses himself guilty of the same felony, and therefore it serves in nature of an indictment against the appellee so long as the approver lives, unless the appellee be of good fame; but yet the general words do receive qualification; for albeit the approver be alive, yet if the approver waive in his appeal, the appellee shall be bailed, if no other appeal be against him. 2 *Inst.* 188.

*House-burning*] Burning of houses, &c. was felony by the common law, as it appeareth by this act, and by our ancient authors, viz. *Glanvil*, *The Mirror*, *Bracton*, *Britton*, and *Fleta*; and this seemeth to be the law before the conquest. 2 *Inst.* 188.

*False money*] This appears to be treason by the common law. 2 *Inst.* 188.

*Counterfeiting the King's seal*] This was also treason by the common law, as it appeareth by the said ancient authors; and both these were declared to be high treason at the common law by the statute of 25 *Ed.* 3. cap. 1. See more hereof in the third part of the *Inst.* 2 *Inst.* 189.

*Persons excommunicate*] That is, he that is certified into *Chancery* by the bishop to be excommunicated, and after is taken by force of the King's writ of *excommunicato capiendo*, (which is so called of the words in the writ called a *significavit*) is not bailable, for in ancient time men were excommunicated but for heresies, *propter lepram animæ*, or other heinous causes of ecclesiastical conufance, and not for small or petty cases; and therefore in those cases the party was not bailable by the sheriff or gaoler without the King's writ; but if the party offered sufficient caution *de parendo mandatis ecclesie in forma juris*, then should the party have the King's writ to the bishop to accept his caution, and to cause him to be delivered; and if the bishop will not send to the sheriff to deliver him, then shall he have a writ out of the *Chancery* to the sheriff for his delivery; or if he be excommunicated for a temporal cause, or for a matter whereof the ecclesiastical court hath no conufance, he shall be delivered by the King's writ without any satisfaction. 2 *Inst.* 189.

One taken by an *excommunicato capiendo* upon the stat. 5 *Eliz.* cap. 23. and brought to the bar by *hab. corp.* was bailed, by the opinion of all the justices, *contra Williams*. *Bulst.* 122. *Pasch.* 9 *Jac.* *Anon. ibid.* *Telverton* J. said, that so it was resolved in one *Keyser's* case, where he was taken by a writ *de excommunicato capiendo*, brought hither by a *habeas corpus*, and upon cause shewed, he was bailed by the court *de die in diem*; but neither the sheriff, nor any justice of the peace in the county can bail such a one, but the court here may well bail one, as in the case before, *de die in diem*.

*Manifest offences*] Or for open or manifest offences; for, as has been said, bail is *quando stat indifferenter*, and not when the offence is open and manifest. 2 *Inst.* 189.

One was found guilty of felony, but it being doubted whether clergy was allowable or not, he was reprieved without judgment; and the justices held,

held, that he is notailable, because by his being convicted, he is more than one vehemently suspected; and the intendment of the law in bail, is, *quod stat indifferenter*, if he be guilty or not, till trial, &c. *D. 179. a. pl. 42. Pasch. 2 Eliz. Anon. Jenk. 219. pl. 88. S. P.* And as to him that is convicted, two juries have passed upon him, and it is evident that he is guilty; by all the judges of *England*.

*Treason*] For by the common law, a man accused or indicted of high treason, or of any felony whatsoever, wasailable upon good surety; for at the common law the gaol was his pledge or surety that could find none; and this appears by *Glanvil*, who says, *Is qui accusatur ut prædiximus, per plegios salvos & securos solet attachiari, aut si plegios non habuerit, in carcerem detrudi*; so as a man by the common law wasailable for any offence until he was convicted; and this seems to be the old law of the land before the conquest, *viz. Ingenuus quisque fidejussores, qui cum (si quando in crimen vocetur) jus suum cuique tribuere quam paratissimum fore præsent, fidißimes adhibeto.* 2 *Inst.* 189.

*In no wise replevifable*] That is, the sheriff shall not replevy them by the common writ *de homine replegiando*; nor without writ, that is, *ex officio*; but all or any of these may be bailed in the *King's Bench*, &c. 2 *Inst.* 189.

*Larceny*] This act divides larceny into two kinds, *viz.* grand and petit; grand larceny is when the thing stolen is above the value of 12*d.* and petit larceny is, when it is of the value of 12*d.* or under, and the things stolen are to be reasonably valued; for the ounce of silver at the making of this act, was at the value of 20*d.* and now it is of the value of 5*s.* and above. 2 *Inst.* 189, 190.

*Sheriffs*] That is, *sheriffs in their tournes, or lords in their leets*, or those that have infang-thief, and out-fang-thief, &c. 2 *Inst.* 190.

*Let out by sufficient surety*] That is to be understood where the indictment was taken before the sheriff in his tourn, for here he was judge of the cause, for other prisoners could not be bailed without writ; and if the sheriff having sufficient surety offered to him, refused to bail him, he should have a writ *de manucaptione* directed to the sheriff to take pledges of him; and if the *bailiff of a hundred* (which is intended of a *steward in a leet*) refused to take pledges of one indicted before him, the prisoner should have had a writ *de manucaptione* to the sheriff to take pledges of him; and all this appears by the writ *de manucaptione*; but since his time this writ of *manucaptione* is taken away by the statute of 28 *Ed. 3.* 2 *Inst.* 190.

*Without giving ought of their goods*] For neither the sheriff, nor other of the *King's* officers could take any thing for doing his office. 2 *Inst.* 190.

*If he be sheriff, &c. of fee*] So that at this time there were sheriffwicks in fee, and conitabewicks, and bailiwicks in fee, which had the keeping of prisons; these being attainted of letting to bail of any prisoner notailable,



bailable, should lose the fee and bailiwick for ever; and upon office found, the King should have the inheritance of the office in him to be grantable over. 2 *Inst.* 190.

*And if the under-sheriff*] Note, the action of the under-sheriff, or under-bailiff without the consent of his superior, is no forfeiture of the fee, or bailiwick of the superior, tho' in many other cases the superior shall answer for his deputy. 2 *Inst.* 191.

*If any with-hold prisoners replevisable*] Here it appeareth that to deny a man plevin that is plevisable, and thereby to detain him in prison, is a great offence, and grievously to be punished. 2 *Inst.* 191.

It seems clear, that wherever justices of the peace have power to hear and determine any offence which is bailable within the said statute of 3 *Ed.* 1. any *one* of such justices seems consequently to have power to bail any person indicted at the sessions for such offence, because every justice is a judge of the court which is to determine it. 2 *Hawk. P. C.* 103, 105. *Coke*, bail and mainprize, *chap.* 6. *Lamb* 347.

Also every justice of the peace has a discretionary power of admitting persons to bail who have given a dangerous wound. 2 *Hawk. P. C.* 103. But the power of justices of admitting to bail, is chiefly regulated by the three following acts of parliament.

1 Ric. 3. c. 3. **Stat.** 1 Ric. 3. c. 3. [*A. D.* 1483. *intituled*] "Every justice of peace may let a prisoner to mainprize. No officer shall seize the goods of a prisoner until he be attainted."

Every justice of peace may admit a prisoner to bail. Rep. 3 H. 7. c. 3. 1 & 2 Ph. & M. c. 13. "Forasmuch as divers persons have been daily arrested and imprisoned for suspicion of felony, sometime of malice, and sometime of a light vexation and trouble: (2) Be it ordained and established by authority of this present parliament, That every justice of peace in every shire, city, or town, shall have authority and power, by his or their discretion, to let such prisoners and persons, so arrested, to bail or mainprize, in like form as though the same prisoners or persons were indicted thereof of record before the same justices in their sessions; (3) and that justices of peace have authority to inquire in their sessions of all manner escapes of every person arrested and imprisoned for felony. (4) And that no sheriff, under-sheriff, nor escheator, bailiff of franchise, nor any other person, take or seize the goods of any person arrested or imprisoned for suspicion of felony, before that the same person, so arrested and imprisoned, be convicted or attainted of such felony according to the law, or else the same goods otherwise lawfully forfeited; (5) upon pain to forfeit the double value of the goods so taken, to him that is so hurt in that behalf, by action of debt to be pursued by like process, judgment, and execution, as is commonly used in other actions of debt sued at the common law; (6) and that no essoin or protection be allowed in any such action; nor that the defendant in any such action be admitted to wage or do his law."

Escape of Felons inquirable by justices of peace. 1 Lutw. 132. Cro. El. 749. 43 Ed. 3. f. 24. Cro. 193. No officer shall seize the goods of a prisoner until he be attainted, or the goods forfeited.

But this statute, so far as it gives power to a *single* justice, is repealed by the following act of 3 *Hen.* 7. c. 3.

**Stat.**

**Stat.** 3 Hen. 7. cap. 3. [A. D. 1486. intituled] “ Justices of peace 3 Hen. 7. may let prisoners to bail. The sheriff shall certify the names of all his c. 3. prisoners at the gaol-delivery.”

*Item*, “ Where in the parliament late holden at *Westminster*, the first 1 R. 3. c. 3. year of *Richard*, late in deed, and not of right, king of *England* the Justices of the peace may let a prisoner to mainprise, third; it was ordained and enacted among other divers acts, that every justice of the peace, in every shire, city, or town, should have authority and power, by his or their discretion, to let prisoners, and persons arrested for light suspicion of felony, to bail or mainprise; (2) by colour whereof after wards divers persons, such as were not mainpernable, were oftentimes letten to bail and mainprise, by justices of the peace, against the due form of the law, whereby many felons escaped, to the great displeasure of the king, and annoyance of his liege people: (3) Wherefore the king our said sovereign lord considering it, by the advice and assent of the lords spiritual and temporal, and at the prayer of the commons in this present parliament assembled, and by the authority of the same, hath ordained, established, and enacted, That the justices of peace in every shire, city, and town, or two of them at the least, whereof one to be of the *quorum*, have authority and power to let any such prisoners, or persons mainpernable by the law, that have been imprisoned within their several counties, city, or town, to bail or mainprise, unto their next general sessions, or unto the next gaol-delivery of the same gaols in every shire, city, or town, as well within franchises as without, where any gaols been or hereafter shall be; (4) and that the said justices of the peace, or one of them, so taking any such bail or mainprise, do certify the same at the next general sessions of the peace, or the next general gaol-delivery of any such gaol within every such county, city, or town, next following after any such bail or mainprise so taken; upon pain to forfeit unto the king for every default thereupon recorded 10*l*. (5) And moreover it is enacted by the same authority, that every sheriff, bailiff of franchise, and every other person, having authority or power of keeping of gaol, or of prisoners for felony, in like manner and form do certify the names of every such prisoner in their keeping, and of every prisoner to them committed for any such cause, at the next general gaol-delivery, in every county or franchise where any such gaol or gaols have been, or hereafter shall be, there to be kalendred before the justices of the deliverance of the same gaol, whereby they may, as well for the king as for the party, proceed to make deliverance of such prisoners according to the law, (6) upon pain to forfeit unto the king for every default there recorded, C. s. (7) and that the foresaid act giving authority and power in the premisses to any justice of the peace by himself, be in that behalf utterly void and of none effect, by authority of this present parliament.”

But these statutes having been often abused by justices of the peace bailing persons in the name of *two* justices, where *one* only was *present*, and for offences *not* bailable; it was therefore found necessary to make the following act. 1. *Bac. Abr.* 222.

**Stat.**

1 & 2 Ph. &  
Ma. c. 13.

Stat. 1 & 2 Phil. & Ma. c. 13. [A. D. 1554. Intituled] "An act touching bailment of persons."

In what man-  
ner justices of  
peace may  
bail persons  
arrested of fe-  
lony, or suspi-  
cion thereof,  
&c.

3 H. 7. c. 3.  
1 Roll. 208.

"Where in the parliament holden at *Westminster* in the third year of the reign of the noble prince, king *Henry* the seventh, it was among other things ordained and enacted, That no prisoner arrested for felony, should be letten to bail or mainprise, by any one justice of peace, but by the whole justices, or at least by two of them, whereof one to be of the *Quorum*; (2) since the making of which estatute, one justice of peace in the name of himself and one other of the justices his companion, not making the said justice party nor privy unto the case wherefore the prisoner should be bailed, hath oftentimes by sinister labour and means, set at large the greatest and notablest offenders, such as be not replevisable by the laws of this realm; (3) and yet the rather to hide their affections in that behalf, have signified the cause of their apprehension to be but only for suspicion of felony, whereby the said offenders have escaped unpunished, and do daily, to the high displeasure of Almighty God, the great peril of the king and queen's true subjects, and encouragement of all thieves and evil-doers:

None shall be  
let to bail,  
which be for-  
bidden to be  
bailed by the  
statute of

3 Ed. 1. c. 15.

*Sett.* 2. For reformation whereof, Be it ordained and enacted by the king and queen's majesties, the lords spiritual and temporal, and the commons in this present parliament assembled, and by authority of the same, That from and after the first day of *April* next coming, no justice or justices of peace shall let to bail or mainprise any such person or persons, which for any offence or offences by them or any of them committed, be declared not to be replevied or bailed, or be forbidden to be replevied or bailed by the statute of *Westminster primer*, made in the parliament holden in the third year of the reign of king *Edward* the first.

3 Bull. 113.

*Sett.* 3. And furthermore, That any person or persons arrested for man-slaughter or felony, or suspicion of man-slaughter or felony, being bailable by the law, shall not after the said first day of *April* be let to bail or mainprise by any justices of peace, if it be not in open sessions, except it be by two justices of peace at the least, whereof one to be of the *Quorum*, and the same justices to be present together at the time of the said bailment or mainprise; (2) which bailment or mainprise they shall certify in writing subscribed or signed with their own hands, at the next general gaol-delivery to be holden within the county where the said person or persons shall be arrested or suspected.

The justices  
duty in bail-  
ment of a pri-  
soner ex-  
tended to such  
as shall be  
committed for  
man slaugh-  
ter, &c. 2 & 3  
Ph. & M. c.  
10. in exami-  
nation of him

*Sett.* 4. And that the said justices, or one of them, being of the *Quorum*, when any such prisoner is brought before them for any man-slaughter or felony, before any bailment or mainprise, shall take the examination of the said prisoner, and information of them that bring him, of the fact and circumstances thereof, and the same, or as much thereof as shall be material to prove the felony, shall put in writing before they make the same bailment; (2) which said examination, together with the said bailment, the said justices shall certify at the next general gaol-delivery to be holden within the limits of their commission.

and others, and certifying thereof. 2 & 3 Ph. & M. c. 10. Kelyng 19.

*Señ. 5.* “ And that every coroner, upon any inquisition before him found, whereby any person or persons shall be indicted for murder or man-slaughter, or as accessory or accessories to the same, before the murder or man-slaughter committed, shall put in writing the effect of the evidence given to the jury before him, being material: (2) And as well the said justices, as the said coroner, shall have authority by this act, to bind all such by recognizance or obligation, as do declare any thing material, to prove the said murder or man-slaughter, offences or felonies, or to be accessory or accessories to the same, as is aforesaid, to appear at the next general gaol-delivery to be holden within the county, city, or town corporate where the trial thereof shall be, then and there to give evidence against the party so indicted at the time of his trial; (3) and shall certify as well the same evidence as such bond or bonds in writing, as he shall take, together with the inquisition or indictment before him taken and found, at or before the time of his said trial thereof to be had or made: (4) And likewise the said justices shall certify all and every such bond taken before them, in like manner as before is said of bailments and examination: (5) And in case any justice of peace of *quorum*, or coroner, shall after the said first day of *April*, offend in any thing contrary to the true intent and meaning of this present act, that then the justices of gaol-delivery of the shire, city, town or place where such offence shall happen to be committed, upon due proof thereof by examination before them, shall for every such offence set such fine on every of the same justices of peace and coroner, as the same justices of gaol-delivery shall think meet, and estreat the same, as other fines and amerciaments assessed before justices of gaol-delivery ought to be.”

The coroner's duty upon an inquisition found before him.

The penalty of any justice of peace or coroner omitting his duty.

*Señ. 6.* “ Provided always, and be it further enacted by the authority aforesaid, That justices of peace and coroners within the city of *London*, and the county of *Middlesex*, and in other cities, boroughs and towns corporate within this realm and *Wales*, shall within their several jurisdictions have authority to let to bail felons and prisoners, in such manner and form as they have been heretofore accustomed; this act, or any thing therein contained to the contrary notwithstanding: (2) And also shall take examinations and bonds, as is aforesaid, upon every bailment by them or any of them to be made; (3) and shall certify every such bailments, bonds and examinations by them or any of them taken or made, at the next gaol-delivery to be holden within the shire, city, borough or town where their several jurisdictions extendeth; upon like pain and forfeiture as is before limited in this present act.”

Justices of peace of London, Middlesex, &c.

*Señ. 7.* “ And be it also enacted by the authority aforesaid, That no writs of *habeas corpus* or *certiorari* shall be hereafter granted to remove any prisoner out of any gaol, or to remove any recognizance, except the same writs be signed with the proper hand of the chief justice, or in his absence, one of the justices of the court out of which the same writs shall be awarded or made; (2) upon pain that he that writeth any such writs, not being signed as is aforesaid, to forfeit to our said sovereign lord the king and the queen, for every such writs, five pounds.”

Removing of a prisoner, or recognizance.

The authority given to one justice of the peace by 1 R. 3. to admit persons to bail for felony, being repealed by 3 H. 7. and 1 & 2 Phil. & Ma.

one justice of the peace cannot admit persons to bail, unless it be for an offence directly tending to the breach of the peace, the restraint whereof is the chief end of his office, or for an offence by statute put under the cognizance of one justice, or for an offence indictable at the sessions. 2 *Hawk. P. C.* 105.

But though the statute of *Pb. & Ma.* has prescribed the statute of *Westm.* 1. as a pattern for justices to follow in relation to the bail, and it therefore follows, that a person under an actual arrest for any crime, declared to be irrepleviable by that act, cannot be bailed by any justice; yet if a person at large be only accused of any such crime on a slight suspicion, before a justice of the peace, it seems that the justices ought not to commit him, but ought to take surety from him to appear before a proper court. 2 *Hawk. P. C.* 105.

Also the statute of 1 & 2 *Pb. & Ma.* expressly mentioning the bailing of persons for man-slaughter, as well as for other felonies, it is clear, that justices of the peace, may by force thereof safely bail any person imprisoned on a slight suspicion of a fact, appearing to be no higher an offence than man-slaughter; and much more if it appear to amount to no more than homicide by misadventure, or in self-defence; but the justices ought to be cautious the offence does not amount to murder; also that there be no violent presumption that the party did the fact; for if any such appear, the party ought not to be bailed, though the offence amount to no more than homicide by misadventure or self-defence. 2 *Hawk. P. C.* 105. 1 *Rol. Rep.* 268. *H. P. C.* 299. *Dalt. c.* 114. *Lamb.* 346. 2 *Inst.* 314.

Man-slaughter not bailable, if confessed by the party.

Mich. 14 Jac. 1. B. R. The King against Sir Nicholas Poynes and his son.

Sir *Nicholas Poynes* and his son were indicted for murder, and committed to the Marshalsey, without bail or mainprize. The court was moved to have them bailed, because they were not indicted but by the coroner's inquest, and no verdict as yet given up by them, and that as he urged, it was *se defendendo*. *Coke* chief justice: If one do kill another, it is not known at the first, whether this be murder or not. By the stat. *West.* 1. (3 *Ed.* 1.) c. 15. for the death of a man he is not to be bailed. By stat. 1 & 2 *Pb. & Ma. c.* 13. A man is to be bailed in case of man-slaughter, if he be bailable by the law. But in case of man-slaughter he is not bailable in all cases. If he confesses the same, he is not bailable. For the death of a man, I will not bail any one, unless it be by command of the king. We may bail one here for treason, but this we will not do. *Haughton* Justice: If he confesses to a justice of peace that he did the fact, he is not to be bailed. *Coke*: So shall it be for a notorious man-slaughter, he is not to be bailed. —The court refused to bail them; and so by the rule of the court they were sent back again to the Marshalsey.

What shall be deemed sufficient bail.

No person shall be bailed for felony by less than two, and it is said not to be usual for the *King's Bench* to bail a man on a *habeas corpus*, on a commitment for treason or felony, without four sureties; and the sum in which the sureties are to be bound, ought to be never less than 40*l.* for a capital crime; but it may be higher in discretion, on consideration of the ability and quality of the prisoner, and the nature of the offence; and the sureties may be examined on oath concerning their sufficiency, by him that takes the bail; and if a person be bailed by insufficient sureties, he may

be required either by him who took the bail, or by any other who hath power to bail him, to find better sureties, and on his refusal, may be committed; for insufficient sureties are as no sureties. 2 *Hawk. P. C.* 88, 89.

But justices must take care, that under pretence of demanding sufficient surety, they do not make so excessive a demand, as in effect amounts to a denial of bail; for this is looked upon as a great grievance, and is complained of as such by stat. 1 *Will. & Ma. sess.* 2. by which it is declared, *that excessive bail ought not to be required.* Excessive bail not to be required.

It seems clear that wherever a sheriff, in pursuance of the said statute *West. 1. (3 Ed. 1.) c. 15.* or justices of the peace in pursuance of the subsequent statutes, grounded on the said statute of *West. 1.* shall admit any person to bail for felony, with insufficient sureties, who shall not afterwards appear according to the condition of the recognisance, the justices of assize may, by force of 27 *Ed. 1. c. 3.* commonly called the statute *de finibus levatis*, impose such fine on such sheriff or justices of peace, as to such justices of assize in their discretion shall seem proper. But if a prisoner, who is bailed by insufficient sureties, do appear according to the condition of the recognisance, it seems that those who admitted him to bail are safe, in as much as the end of the law is answered, and the appearance of the prisoner as effectually procured by such sureties, as if they had been never so sufficient. 2 *Hawk. P. C.* 89. Of taking in-sufficient bail.

There is no doubt but that the bailing of a person, who is not bailable by law, is punishable either at common law, as a negligent escape, or as an offence against the said statute of *West. 1. c. 15.* and 1 & 2 *Pb. & Ma. c. 13.* and the two following statutes. 2 *Hawk. P. C.* 89. Of granting bail where it ought to be denied.

**Stat. 27 Ed. 1. c. 3.** [*A. D. 1299. intituled*] “ Justices of assize shall be of gaol-delivery. Who shall punish officers bailing such as are not bailable.” 27 Ed. 1. c. 3.

“ Forasmuch as sheriffs and others heretofore have let out by replevin common felons, and openly defamed, being taken and imprisoned for murder and felony, and such as be not repleviable, contrary to the form of our Statute of persons repleviable, and not repleviable, lately made, whereby such transgressors not repleviable be let out, (2) and to deliver them deceitfully before the coming of the justices errant, or other assigned for their deliverance, they procure by themselves and by their friends, jurors of the country, and some they threat, whereby as well for fear of the sheriff, and other that let them at large by plevin, as for fear of the thieves being so delivered before the justices assigned for gaol-deliveries, such felonies and murders are concealed, and so being concealed, remain still unpunished; (3) we, for the utility of our realm, and for the more assured conservation of our peace, have provided and ordained, that justices assigned to take assizes in every county where they do take assizes, as they be appointed, incontinent after the assizes taken in the shires, shall remain both together if they be lay; and if one of them be a clerk, then one of the most discreet knights of the shire, being associate to him that is a 3 Ed. 1. c. 15. Justices of assize shall be assigned to justices of gaol-delivery.

layman, by our writ shall deliver the gaols of the shires, as well within liberties as without, of all manner of prisoners, after the form of the gaol-deliveries of those shires beforetime used. (4) And the same justices shall inquire then, if sheriffs or any other have let out by replevin prisoners not repleviable, or have offended in any thing contrary to the form of the aforesaid statute lately made at *Westminster*; and whom they shall find guilty, they shall chasten and punish in all things according to the form of the statute aforesaid.”

4 Ed. 3. c. 2. Stat. 4 Ed. 3. c. 2. [*A. D.* 1330. intituled] “The authority of justices of assise, gaol-delivery, and of the peace.”

4 Inst 168. “Item it is ordained, That good and discreet persons, other than of the  
20 Ed. 3. c. 6. places, if they may be found sufficient, shall be assigned in all the shires of *England*, to take assises, juries, and certifications, and to deliver the gaols; (2) and that the said justices shall take the assises, juries, and certifications, and deliver the gaols at least three times a year, and more often if need be.  
1 Ed. 3. stat. (3) Also there shall be assigned good and lawful men in every county to  
2. c. 16. keep the peace. (4) And at the time of the assignments, mention shall be  
18 Ed. 3. stat. made that such as shall be indicted or taken by the said keepers of the  
1. c. 2. peace, shall not be let to mainprise by the sheriffs, nor by none other ministers, if they be not mainpernable by the law; (5) nor that such as shall  
34 Ed. 3. c. 1. be indicted, shall not be delivered but at the common law. (6) And the  
13 R. 2. stat. justices assigned to deliver the gaols shall have power to deliver the same  
1. c. 7. gaols of those that shall be indicted before the keepers of the peace; (7) and that the said keepers shall send their indictments before the justices, and they shall have power to enquire of sheriffs, gaolers, and other, in whose ward such indicted persons shall be, if they make deliverance, or let to mainprise any so indicted, which be not mainpernable, and to punish the said sheriffs, gaolers, and others, if they do any thing against this act.”

Justices of the peace, before they bail a man under commitment, must at their peril inform themselves of the cause for which he was committed; for if he were in truth committed for a cause notailable by law, it is no excuse that they did not know that he was committed for such cause. 2 *Hawk. P. C.* 90. *Poph.* 96. *Dalt. cap.* 114.

Information  
against a justice for bail  
ing a felon.  
2 Stran.  
1215. Mich  
18 Geo. 2.  
Rex & William Clark, esq.  
Court refused  
to bail a person for receiving stolen  
goods: defendant's affidavit.

He as a justice of *Surrey* committed a man on suspicion of stealing a mare, and bound over the owner to prosecute. Afterwards upon examining two other persons, he admitted the party to bail. The prosecutor appeared at the assises, and found a bill, but the party accused did not appear. And the court granted an information against the justice, declaring they should not have bailed the man themselves.

The defendant was brought up here by *habeas corpus* from the house of correction, being committed there for receiving a silver spoon, which was stolen, knowing it to be stolen; and Mr. *Eyres* moved that he might be bailed, having four credible and substantial men for that purpose, and having an affidavit to produce, which positively swore, that though he did

did receive the silver spoon, yet that he did not know that it was stolen: vit admits the receipt of the goods, but denies he knew them to be stolen, which is a fact triable only by a jury. Rep. in time of lord Hardw. 96. Mich. 8 Geo. 2. in B. R. Rex v. Parnam.

The court, at first, scrupled to suffer the affidavits to be read; but on citing *Crips's* case, they permitted it. And then Mr. Justice Lee said, that the prisoner had admitted the reception of the spoon, though he denies that he knew it was stolen. So that the only question is, whether he did know it or not; which is a matter fit to be tried by none but a jury: And that the reason why they admitted *Crips* to bail was, because the prosecutor himself confessed himself doubtful as to the identity of the person. But that is not the case here; and in *Crips's* case, I denied, on the trial, to grant him a copy of his indictment, in order to bring an action upon it for a malicious prosecution; because the accusation seemed to be grounded merely on the mistake of the identity of the person.

Chief Justice: According to my brother Lee's state of the case of *Rex* and *Crips*, it appears that he was not bailed, on consideration of the merits of the commitment, but of the mistake of the person accused. But here you apply to have the defendant discharged on the very merits: but I think it would be of the most dangerous consequence, if we should allow of such proceedings; for then all the prisoners in *England* would lay their case before us, and we, instead of the jury, must try the truth of the fact for which they are committed. Beside, it might very much encourage the compounding of felonies, between the prosecutor and prisoner. And therefore I think he ought to be remanded: and *per curiam* he was remanded, *absente Prolyn*.

This seems to be a misdemeanour, not only by the statute, but also by the common law, and punishable thereby as an offence against the liberty of the subject, not only by action at the suit of the party wrongfully imprisoned, but also by indictment at the suit of the king. 2 Hawk. P. C. 90.

But it seems also clear, that he who has power to bail another, is not bound to demand of him to find sureties, and to forbear committing him till he shall refuse to find them, but may well justify his commitment, unless the party himself shall offer his sureties. 2 Hawk. P. C. 90.

Stat. 31 Car. 2. c. 2. [A. D. 1678. intituled] "An act for the better securing the liberty of the subject, and for prevention of imprisonment beyond the seas." Bail by *habeas corpus*.

"Whereas great delays have been used by sheriffs, gaolers, and other officers, to whose custody any of the king's subjects have been committed for criminal, or supposed criminal matters, in making return of writs of *habeas*



*habeas corpus* to them directed, by standing out an *alias* and *pluries habeas corpus*, and sometimes more, and by other shifts to avoid their yielding obedience to such writs, contrary to their duty, and the known laws of the land, whereby many of the king's subjects have been, and hereafter may be long detained in prison, in such cases where by law they are bailable, to their great charges and vexation :

*Stat.* 2. " For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters ; (2) Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority thereof, That whensoever any person or persons shall bring any *habeas corpus* directed unto any sheriff or sheriffs, gaoler, minister or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the gaol or prison with any of the under-officers, under-keepers or deputy of the said officers or keepers, that the said officer or officers, his or their under-officers, under-keepers or deputies, shall within three days after the service thereof, as aforesaid, (unless the commitment aforesaid were for treason or felony, plainly and specially expressed in the warrant of commitment) upon payment or tender of the charges of bringing the said prisoner to be ascertained by the judge or court that awarded the same, and endorsed upon the said writ, not exceeding twelve pence *per* mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge, to which he shall be brought, according to the true intent of this present act, and that he will not make any escape by the way, make return of such writ ; (3) and bring, or cause to be brought the body of the party so committed or restrained, unto or before the lord chancellor, or lord keeper of the great seal of *England*, for the time being, or the judges or barons of the said court from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof ; (4) and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such court or person is or shall be residing ; and if beyond the distance of twenty miles, and not above one hundred miles, then within the space of ten days ; and if beyond the distance of one hundred miles, then within the space of twenty days after such delivery aforesaid, and not longer.

*Stat.* 3. " And to the intent that no sheriff, gaoler or other officer may pretend ignorance of the import of any such writ ; (2) Be it enacted by the authority aforesaid, That all such writs shall be marked in this manner, *Per statutum tricesimo primo Caroli secundi regis*, and shall be signed by the person that awards the same ; (3) and if any person or persons shall be, or stand committed or detained, as aforesaid, for any crime, unless for felony or treason, plainly expressed in the warrant of commitment in the vacation-time, and out of term, it shall and may be lawful to and for the person or persons

Writs of *habeas corpus* within three days after service to be returned, and the body brought, if within twenty miles, &c.  
14 Vin. Abr. 209, &c.

Such writs how to be marked.

Writs of *habeas corpus*, and the proceedings thereon in vacation-time.

sons so committed or detained (other than persons convicted or in execution) by legal process, or any one on his or their behalf, to appeal or complain to the lord chancellor or lord keeper, or any one of his majesty's justices, either of the one bench or of the other, or the barons of the *Exchequer* of the degree of the coif; (4) and the said lord chancellor, lord keeper, justices or barons, or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made, that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request made in writing by such person or persons, or any on his, her or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an *habeas corpus* under the seal of such court whereof he shall then be one of the judges; (5) to be directed to the officer or officers in whose custody the party so committed or detained shall be, returnable *immediate* before the said lord chancellor or lord keeper, or such justice, baron, or any other justice or baron of the degree of the coif of any of the said courts; (6) and upon service thereof, as aforesaid, the officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or their deputy, in whose custody the party is so committed or detained, shall, within the times respectively before limited, bring such prisoner or prisoners before the said lord chancellor or lord keeper, or such justices, barons, or one of them, before whom the said writ is made returnable, and in case of his absence, before any other of them, with the return of such writ, and the true causes of the commitment and detainer; (7) and thereupon, within two days after the party shall be brought before them, the said lord chancellor or lord keeper, or such justice or baron, before whom the prisoner shall be brought, as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties in any sum, according to their discretions, having regard to the quality of the prisoner, and nature of the offence, for his or their appearance in the court of *King's Bench* the term following, or at the next assizes, sessions or general gaol-delivery of and for such county, city or place where the commitment was, or where the offence was committed, or in such other court where the said offence is properly cognizable, as the case shall require, and then shall certify the said writ, with the return thereof, and the said recognizance or recognizances, into the said court where such appearance is to be made; (8) unless it shall appear unto the said lord chancellor or lord keeper, or justice or justices, or baron or barons, that the party so committed is detained upon a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the peace, for such matters or offences for the which by the law the prisoner is not bailable.

Sec. 4. " Provided always, and be it enacted, That if any person shall have wilfully neglected by the space of two whole terms after his imprisonment, Persons neglecting two terms to pray a *habeas corpus*, shall have

none in vacation time, in pursuance of this act.

Officers how to be proceeded against for not obeying such writs.

sonment, to pray a *habeas corpus* for his enlargement, such person so wilfully neglecting, shall not have any *habeas corpus* to be granted in vacation-time, in pursuance of this act.

*Seet. 5.* " And be it further enacted by the authority aforesaid, That if any officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners according to the command of the said writ, within the respective times aforesaid, or upon demand made by the prisoner or person in his behalf, shall refuse to deliver, or, within the space of six hours after demand, shall not deliver to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he and they are hereby required to deliver accordingly, all and every the head gaolers and keepers of such prisons, and such other person in whose custody the prisoner shall be detained, shall for the first offence forfeit to the prisoner or party grieved, the sum of one hundred pounds; (2) and for the second offence the sum of two hundred pounds, and shall and is hereby made incapable to hold or execute his said office; (3) the said penalties to be recovered by the prisoner or party grieved, his executors or administrators, against such offender, his executors or administrators, by any action of debt, suit, bill, plaint or information, in any of the king's courts at *Westminster*, wherein no *essoins*, protection, privilege, injunction, wager of law, or stay of prosecution by *Non vult ulterius prosequi*, or otherwise, shall be admitted or allowed, or any more than one imparlance; (4) and any recovery or judgment at the suit of any party grieved, shall be a sufficient conviction for the first offence; and any after recovery or judgment at the suit of a party grieved for any offence after the first judgment, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence.

Persons set at large not to be recommitted but by order of court.

*Seet. 6.* " And for the prevention of unjust vexation by reiterated commitments for the same offence; (2) Be it enacted by the authority aforesaid, That no person or persons, which shall be delivered or set at large upon any *habeas corpus*, shall at any time hereafter be again imprisoned or committed for the same offence, by any person or persons whatsoever, other than by the legal order and process of such court wherein he or they shall be bound by recognizance to appear, or other court having jurisdiction of the cause; (3) and if any other person or persons shall knowingly contrary to this act recommit or imprison, or knowingly procure or cause to be re-committed or imprisoned for the same offence, or pretended offence, any person or persons delivered or set at large, as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved, the sum of five hundred pounds; any colourable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered, as aforesaid.

Persons committed for treason or felony, shall be

*Seet. 7.* " Provided always, and be it further enacted, That if any person or persons shall be committed for high treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition

tion in open court the first week of the term, or first day of the sessions of *oyer* and *terminer*, or general gaol-delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of *oyer* and *terminer*, or general gaol-delivery after such commitment, it shall and may be lawful to and for the judges of the court of *King's Bench*, and justices of *oyer* and *terminer*, or general gaol-delivery, and they are hereby required, upon motion to them made in open court the last day of the term, sessions or gaol-delivery, either by the prisoner, or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to the judges and justices upon oath made, that the witnesses for the king could not be produced the same term, sessions, or general gaol-delivery; (2) and if any person or persons committed, as aforesaid, upon his prayer or petition in open court the first week of the term, or first day of the sessions of *oyer* and *terminer* and general gaol-delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of *oyer* and *terminer* or general gaol-delivery after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

indicted the next term, or let to bail.  
And tried the term, &c. after, or discharged.  
1 Vent. 346.

*Seet.* 8. " Provided always, That nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or with process in any civil cause, but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to the law, for such other suit.

*Seet.* 9. " Provided always, and be it enacted by the authority aforesaid, That if any person or persons, subjects of this realm, shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal, or supposed criminal matter, that the said person shall not be removed from the said prison and custody, into the custody of any other officer or officers; (2) unless it be by *habeas corpus*, or some other legal writ; or where the prisoner is delivered to the constable, or other inferior officer to carry such prisoner to some common gaol; (3) or where any person is sent by order of any judge of assize, or justice of the peace, to any common work-house or house of correction; (4) or where the prisoner is removed from one prison or place to another within the same county, in order to his or her trial or discharge in due course of law; (5) or in case of sudden fire or infection, or other necessity; (6) and if any person or persons shall, after such commitment aforesaid, make out and sign, or countersign any warrant or warrants for such removal aforesaid, contrary to this act, as well he that makes or signs, or countersigns such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer and incur the pains and forfeitures in this act before mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid by the party grieved.

*Seet.* 10. " Provided also, and be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any prisoner and prisoners, as aforesaid, to move and obtain his or their *habeas corpus* as well out of the high court of *Chancery*, or court of *Exchequer*, as out of the courts of *King's Bench* or *Common Pleas*, or either of them;

The penalty for denying a *habeas corpus*. (2) and if the said lord chancellor or lord keeper, or any judge or judges, baron or barons for the time being, of the degree of the coif, of any of the courts aforesaid, in the vacation-time, upon view of the copy or copies of the warrant or warrants of commitment or detainer, or upon oath made that such copy or copies were denied, as aforesaid, shall deny any writ of *habeas corpus* by this act required to be granted, being moved for, as aforesaid, they shall severally forfeit to the prisoner or party grieved, the sum of five hundred pounds, to be recovered in manner aforesaid.

*Habeas corpus* shall run into county palatine and privileged places.

SECT. 11. " And be it declared and enacted by the authority aforesaid, That an *habeas corpus*, according to the true intent and meaning of this act, may be directed and run into any county palatine, the cinque-ports, or other privileged places within the kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, and the isles of *Jersey* or *Guernsey*; any law or usage to the contrary notwithstanding.

No subjects shall be sent to foreign prisons.  
2 Vent. 314.

SECT. 12. " And for preventing illegal imprisonments in prisons beyond the seas; (2) Be it further enacted by the authority aforesaid, That no subject of this realm that now is, or hereafter shall be an inhabitant or resident of this kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, shall or may be sent prisoner into *Scotland*, *Ireland*, *Jersey*, *Guernsey*, *Tangier*, or into parts, garrisons, islands or places beyond the seas, which are, or at any time hereafter shall be within or without the dominions of his majesty, his heirs or successors; (3) and that every such imprisonment is hereby enacted and adjudged to be illegal; (4) and that if any of the said subjects now is, or hereafter shall be so imprisoned, every such person and persons so imprisoned shall and may for every such imprisonment maintain, by virtue of this act, an action or actions of false imprisonment, in any of his majesty's courts of record, against the person or persons by whom he or she shall be so committed, detained, imprisoned, sent prisoner or transported, contrary to the true meaning of this act, and against all or any person or persons that shall frame, contrive, write, seal or countersign any warrant or writing for such commitment, detainer, imprisonment or transportation, or shall be advising, aiding or assisting in the same, or any of them; (5) and the plaintiff in every such action shall have judgment to recover his treble costs, besides damages; which damages so to be given, shall not be less than five hundred pounds; (6) in which action no delay, stay or stop of proceeding by rule, order or command, nor no injunction, protection or privilege whatsoever, nor any more than one imparlance shall be allowed, excepting such rule of the court wherein the action shall depend, made in open court, as shall be thought in justice necessary, for special cause to be expressed in the said rule; (7) and the person or persons who shall knowingly frame, contrive, write, seal or countersign any warrant for such commitment, detainer or transportation, or shall so commit, detain, imprison or transport any person or persons contrary to this act, or be any ways advising, aiding or assisting therein, being lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within the said realm of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, or any of the

Penalty.

the islands, territories or dominions thereunto belonging; (8) and shall incur and sustain the pains, penalties and forfeitures limited, ordained and provided in and by the statute of *provison* and *præmunire*, made in the sixteenth year of king *Richard* the second; (9) and be incapable of any pardon from the king, his heirs or successors, of the said forfeitures, losses, or disabilities, or any of them.

*Sett.* 13. " Provided always, That nothing in this act extend to give benefit to any person, who shall by contract in writing agree with any merchant or owner of any plantation, or other person whatsoever, to be transported to any parts beyond the seas, and receive earnest upon such agreement, although that afterwards such persons shall renounce such contract. Persons receiving earnest upon contracts to be transported, excepted.

*Sett.* 14. " Provided always, and be it enacted, That if any person or persons lawfully convicted of any felony, shall in open court pray to be transported beyond the seas, and the court shall think fit to leave him or them in prison for that purpose, such person or persons may be transported into any parts beyond the seas; this act, or any thing therein contained to the contrary notwithstanding. Persons convicted of felony, and praying transportation excepted.

*Sett.* 15. " Provided also, and be it enacted, That nothing herein contained, shall be deemed, construed, or taken to extend to the imprisonment of any person before the first day of *June* one thousand six hundred seventy and nine, or to any thing advised, procured, or otherwise done, relating to such imprisonment; any thing herein contained to the contrary notwithstanding. Imprisonment before the first of June 1679, excepted.

*Sett.* 16. " Provided also, That if any person or persons at any time resident in this realm, shall have committed any capital offence in *Scotland* or *Ireland*, or any of the islands, or foreign plantations of the king, his heirs or successors, where he or she ought to be tried for such offence, such person or persons may be sent to such place, there to receive such trial in such manner as the same might have been used before the making of this act; any thing herein contained to the contrary notwithstanding. Offenders may be sent to be tried where their offences were committed.

*Sett.* 17. " Provided always, and be it enacted, That no person or persons shall be sued, impleaded, molested or troubled for any offence against this act, unless the party offending be sued or impleaded for the same within two years at the most after such time wherein the offence shall be committed, in case the party grieved shall not be then in prison; and if he shall be in prison, then within the space of two years after the decease of the person imprisoned, or his, or her delivery out of prison, which shall first happen. Prosecutions for offences within what time to be made.

*Sett.* 18. " And to the intent no person may avoid his trial at the assises, or general gaol-delivery, by procuring his removal before the assises, at such time as he cannot be brought back to receive his trial there; (2) Be it enacted, That after the assises proclaimed for that county where the prisoner is detained, no person shall be removed from the common gaol upon any *habeas corpus* granted in pursuance of this act, but upon any such *habeas corpus* shall be brought before the judge of assise in open court, who is thereupon to do what to justice shall appertain. After the assises proclaimed, no prisoner to be removed, but before the judge of assise.

*Seft.* 19. " Provided nevertheless, That after the assises are ended, any person or persons detained may have his or her *habeas corpus*, according to the direction and intention of this act.

In suits for  
offence against  
this law, the  
defendants  
may plead the  
general issue,  
&c.

" *Seft.* 20. And be it also enacted by the authority aforesaid, That if any information, suit or action shall be brought or exhibited against any person or persons for any offence committed or to be committed against the form of this law, it shall be lawful for such defendants to plead the general issue, that they are not guilty, or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same, which matter being pleaded, had been good and sufficient matter in law to have discharged the said defendant or defendants against the said information, suit or action, and the said matter shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded; set forth or alledged the same Matter in bar or discharge of such information, suit or action.

Persons com-  
mitted as ac-  
cessaries before  
to petty trea-  
son or felony,  
shall not be re-  
moved or bail-  
ed otherwise  
than before  
this act made.  
*Habeas corpus*  
for a young  
lady who had  
been de-  
coyed away  
from her pa-  
rents. 1 Bur.  
Rep. 606.  
Friday 26  
May 1758.  
Trin. 31 Geo.  
2. Rex v.  
James Clarke,  
Esq;

*Seft.* 21. " And because many times persons charged with petty treason or felony, or as accessaries thereunto, are committed upon suspicion only, whereupon they areailable or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the justices of peace that committed the persons, and have the examinations before them, or to other justices of the peace in the county; (2) Be it therefore enacted, That where any person shall appear to be committed by any judge or justice of the peace, and charged as accessory before the fact, to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act."

A *habeas corpus* had been issued during the last vacation, by lord Mansfield, bearing teste the 8th instant, being the last day of the preceding term, directed to James Clarke esq; commanding him to have before his lordship AT HIS CHAMBERS in Serjeants-Inn, immediately, the body of Lydia Henrietta Clarke, his daughter, then detained in his custody, together with the day and cause of her taking and detainer; then and there to undergo and receive what his majesty's said chief justice should then and there consider of, concerning her in this behalf. The writ was now returned *here in court*; and the said Lydia Henrietta Clarke produced.

Mr. Clarke the young lady's father, returned, That she was his DAUGHTER; and that on the 22d of March last, She, without any leave or notice to him or to his wife (her mother) secretly went away from his house in Great Ormond-street, and took with her a box or bundle containing several sorts of wearing-apparel, and about 27*l.* in money.

That in about twelve or fourteen days time, he being credibly informed " that his said daughter had been INVEIGLED away from him by the instigation of one James Mervin, a person of NO visible occupation or substance, nor keeping any house; with DESIGN to MARRY her to one Joseph Isgrave, who

who is under age; and who about two years ago served the said James Clarke as a FOOT BOY, and is yet in no better condition; and that they were all gone together into the Isle of Thanet, where they were to get a LICENCE for such marriage;" He being under great concern for the welfare of his said daughter, and in order to prevent the said marriage (she being intitled to a considerable fortune, after her said mother's death, and being likewise his ONLY child,) took a journey to find them out, and if (in his power) to prevent the said intended marriage; and gave directions to his nephew Mr. Peter Starkie Floyer, to go in quest of them, and if he found them, to endeavour to prevent the marriage, and to bring his said daughter to him.

That his said nephew found them out at a place called Broad Stairs, in the isle of Thanet. Where the said James Mervin represented himself as, and passed for, the uncle of the said daughter.

That the said Lydia Henrietta Clarke came home with his said nephew to his (the said James Clarke's) house in Great Ormond-Street: Where she arrived the 7th of April last: And the said James Mervin came with her as far as Canterbury: But the said Joseph Isgrave run away; and the said James Mervin pretends he is gone to Holland.

That on her being thus brought home to him, he did, in the tenderest manner, represent to her the ruin she was inevitably falling into, if she pursued a design to marry a person so much inferior to herself; and who, having no visible way of livelihood, must reduce her to the utmost necessity and want, as well as disgrace and shame. Whereupon she assuring her said father "That she was not married," He, through his duty as a parent, and from the affection he bore towards her, did receive her into his house, and the mildest and best endeavours have been used to dissuade her from such marriage; such endeavours extending no further than what he humbly conceives to be consistent with that parental care which may be used by a father towards his child: And NO SEVERITY whatsoever hath been used to her.

That she hath ever since the said 7th day of April last, (when she came home to his house as aforesaid) hitherto, OF HER OWN ACCORD, continued to live and reside with him, (her father) and still doth live and reside with him at his said house, of HER OWN ACCORD, and under NO restraint whatsoever. And there is no other cause of detaining the said L. H. C. &c.

Note—This *habeas corpus* was issued upon an affidavit made by the above named James Mervin; who made out a very plausible case, fully sufficient, (if true) to obtain the writ; but which was now alledged by Mr. Norton, (of counsel with Mr. Clarke,) to be absolutely and utterly FALSE in fact. In it the young lady was sworn to be of full age (viz. about 22.) which was true: But it also alledged "That she had been hardly used, and confined, by her father," And other circumstances, which were false. Note also—That although this *habeas corpus* directed her to be brought before lord Mansfield AT HIS CHAMBERS; and although she was actually brought before him whilst he was sitting at Guildhall on Wednesday last; yet, the father desiring to have an opportunity to take the advice of a counsel, in settling the return; and the young lady declaring publicly,  
"She



"She had no objection to continue with her father, who always used her with great tenderness, and much better than she deserved;" His lordship judged it proper to *adjourn* it, and direct her to be brought *into court* the first day of term, the rather too, that she might have a chance of being better advised: For if she had been then taken from her father, it was plain she would have pursued her improvident design; and *Mervin* appeared at *Guildhall*, ready to have carried her off. She was *now brought into court* by *virtue of the same writ*, which was returnable *before his lordship, at his chambers immediate*.

Lord *Mansfield*, now only asked her, "Whether she desired to continue with her father, or to go elsewhere." She answered — "To *continue* with her father." Upon which, The court told her, she was at liberty to go. Which she accordingly did. Then Mr. *Norton* moved that *Mervin's affidavit* might be *FILED*, (together with the return of the writ;) as Mr. *Clarke* was determined to prosecute him for *Perjury*. The court ordered it to be so; and recommended the prosecution very strongly to Mr. *Clarke*.

No peer or lord of parliament hath privilege against being compelled to pay obedience to a writ of *habeas corpus* directed to him. 1 Bur. Rep. 631. Trin. 31 Geo. 2. Rex v. Earl Ferrers.

On *Wednesday* 26th *January* 1757, Mr. *Norton* moved, either for an attachment against the earl for not returning a *Habeas Corpus* already issued, and returnable *immediate*, commanding him to bring up the body of his countess (sister to Sir *William Meredith*,) or for a new *Habeas Corpus*, ACCOMPANIED with an Attachment. He said the latter had been done in the case of *Rex v. Dr. Wright*, Mich. 5 G. 2. B. R; and that the reason of issuing the attachment at the same time with the *Habeas Corpus*, was for prevention of a delay which might, in certain cases, render the remedy ineffectual. Lord *Mansfield* asked Mr. *Norton*, whether He knew any instance of an attachment ACCOMPANYING a writ. He said he understood an attachment going, for *not having* obeyed a writ: But did not know any instance of an attachment going out *together with* the writ. Mr. *Norton* stated *Wright's* case, from a note taken by a gentleman who has now left the bar; where *Lee*, then a puisne judge, held it *might* be done. Though, in that case, *Wright* did afterwards return the writ in court. Note—In the present case Mr. Justice *Foster* had granted a *habeas corpus*: which was served on the earl, by Sir *William Meredith*: But Sir *William* at length agreed not to prosecute it; on condition that his lordship should carry lady *Ferrers* to *Bath*; which the earl promised, but had not performed. Mr. *Norton* said he would take nothing by his motion. And Mr. *Clayton* moved for a *new writ*, returnable in court *immediate*.

Lord *Ferrers* neglecting likewise to obey this *second writ of habeas corpus*, the counsel for Sir *William Meredith* (on behalf of his sister) intended, on *Tuesday* the 8th of *February* 1757 to have moved for an attachment against lord *Ferrers*, for this his disobedience: But some doubts and difficulties having been started by members of both houses, concerning the *Privilege of PEERAGE*; and "Whether the court of *King's Bench* could issue an ATTACHMENT against a peer during the sitting of parliament, and execute it upon him, ONLY for a CONTEMPT to their court," Sir *William Meredith* judged it prudent to petition the house of lords, for their leave to proceed against the earl; and accordingly did yesterday (by the hands of the earl

earl of *Westmoreland*) deliver such petition stating the facts. Lord *Delawar* opposed it, and said it was too summary and too hasty a method of determining upon their privileges; and proposed referring the matter to a committee, and summoning lord *Ferrers* to answer it in his place: and to obviate the objections which might be made to this method on account of the delay; He offered some schemes for the intermediate safety of the countess. But lord *Mansfield* answered him, and spoke in support of the jurisdiction of his court, and the unreasonableness, injustice and inconvenience of allowing such a privilege in *criminal* cases and *breaches of the peace*. The duke of *Argyle* then spoke to the like effect, and expressed a surprize that there should be any doubt about it; the reason of the thing being so clear and plain. Lastly, the earl of *Hardwicke* spoke strongly and particularly in support of the same doctrine, and adduced many instances and precedents in proof of his positions; and concluded with proposing, that to put an end to all doubt about it for the future, the lords should come to a resolution; and accordingly they did come to the following resolution or declaration, and ordered it to be entered on their journal; viz. “7 *Februarii* 1757. It is ordered and declared, That no peer or lord of parliament hath privilege against being compelled by process of the courts of *Westminster-Hall* to pay obedience to a writ of *habeas corpus* directed to him.” (and it was afterwards, viz. “*Die Mercurii* 8 *Junii* 1757. Ordered and declared by the lords spiritual and temporal in parliament assembled, That no peer or lord of parliament hath privilege of *peerage* or of *Parliament*, against being compelled by process of the courts in *Westminster-Hall*, to pay obedience to a writ *habeas corpus* directed to him.” And it was then and thereby further ordered, “That this order and declaration be entered upon the roll of the *standing orders* of this house.”)

On the 8th of *February* 1757, Mr. *Norton* renewed his motion for an attachment against the earl: And he produced affidavits of his lordship's disobedience to the writ, and continuing his ill usage of his lady. All the affidavits (quite from the beginning of this affair) were read. Lord *Mansfield*: This is a *habeas corpus* at *common law*; which is a prerogative writ, for the liberty of the subject. The court may enforce speedy obedience to it: And the *circumstances* of *this* case (where delay may be very dangerous,) require it. It is reasonable that the lady should have opportunity of laying her case before the court; and swearing the peace, if she thinks proper, in order to obtain the protection of the court. The end of this course that we now take, in issuing an attachment to enforce obedience to the writ, is to have this lady produced for this purpose. And therefore we think, *under the EXTRAORDINARY circumstances* of this case, an *attachment* should issue; to enforce obedience to this writ of *habeas corpus*, which so much affects the preservation and security of this lady. But at the same time, his lordship intimated to them, *not to EXECUTE it AT ALL*, if it was possible to *obtain the end* of their application by any *gentler or other means*; the end and intention of granting it, being only to have the lady immediately brought up. Mr. justice *Denison* (the only other judge in court) only said “that an attachment *ought to go*.” Ordered that a writ of attachment

ment issue against the right honourable *Laurence earl Ferrers*. In consequence whereof, the earl having been served with the writ, (or at least having had it notified to him) by the under-sheriff of *Leicestershire*, accompanied by a brother of the countess:—On the *Saturday* following He appeared in *Westminster-Hall*, and about one o'clock, sent a messenger into court, to lord *Mansfield*, desiring to speak with him." Lord *Mansfield* bid the messenger tell his lordship, "That when an affair was depending before the court, he could not speak with any body about it *but in court*."

Soon after, the earl came upon the bench, and spoke to lord *Mansfield*. It was not easy to understand what he said, as he spoke pretty low: But I imagine he proposed putting some certain questions to his lady; for lord *Mansfield's* answer was, "That when she came into court all *proper* questions would be asked her." Some time afterwards, on the same day—lady *Ferrers* came into court, and had articles of the peace ready to exhibit against the earl. Note—nothing more was said concerning the *habeas corpus* or the *return of it*, the real end of it being sufficiently answered, by her being left at liberty to come to this court, in order to obtain its protection. Sir *Richard Lloyd* and Mr. *Gould*, for the earl, desired leave to ask lady *Ferrers* one or two questions previous to her swearing to the articles which she had prayed leave to exhibit. But lord *Mansfield* told her *ladyship*, that she was *not obliged* to answer any question previous to her swearing the peace. And he told Sir *Richard* that the present business was only to obtain security of the peace. Just at this time, the earl came into the body of the court, (upon the floor, not upon the bench; and desired to ask lady *Ferrers* "Whether an affidavit which she had lately made, in the country, before a commissioner authorized by this court to take affidavits was made by her *voluntarily or involuntarily*." Note—This was an affidavit (in which she had joined, during her being in his power in the country, after the issuing of the *habeas corpus*;) wherein she was made to swear" That she was content to remain with her husband, that she had no complaint against him, and that the application made by her relations for the *habeas corpus* was without her desire and against her will." Which affidavit *her friends* said was so far from being voluntary, that it was *extorted* from her *under duress*; and was the mere effect of fear force, and compulsion, or at least of very *undue influence*.

Lord *Mansfield* persevered in permitting her ladyship, without answering any question, to proceed in exhibiting her articles; and then asked the earl, "If he had security ready." The earl first, and Sir *Richard*, afterwards, pressed that lady *Ferrers* might answer their questions. And Sir *Richard* dropped an intimation that the earl's regard or disregard for her would depend upon her answers. But lord *Mansfield* said he had before told her, that she *need not* answer them. And now he would *not suffer* her, he said, to answer them. Lord *Ferrers* went in and out of court once or twice. But did not, at *this* time, give the security of the peace; nor did Mr. *Norton* press that he should give it immediately. On *Wednesday* the 27th of *April* following

following, the earl appeared; and gave security: himself in 5000*l.* And each manucaptor in 2500*l.*

*Monday, 13th February 1758.* The earl having broken this recognizance in the month of *August 1757*, by drawing a pistol upon lady *Ferrers*, at the earl of *Westmoreland's* at *Mereworth castle* in *Kent*; He was taken up some time after, again, upon a fresh warrant from lord *Mansfield*: And having given bail on the same 13th day of *February 1758*, before my lord chief justice (whilst his lordship was gone out to dinner,) he presently afterwards came into court, to appear. And upon the return of the lord chief justice—The countess also came into court; and swore FRESH articles of the peace against the said earl, grounded upon the above mentioned fact. After which, he (being still present) was called upon to give bail to these recent articles of the peace. He had previously given notice of two persons to be his bail before the lord chief justice: With one of which the prosecutors were not satisfied. After several proposals; and after several hints which came from lord *Mansfield*, as well as from Mr. *Norton*, “That it was necessary for the earl to give bail *at present*, and not to pray time to do so, as the giving it *now* was the only method he could take, if he expected to remain at liberty;” It ended in a compromise to take both these persons as bail now, and to give a few days time for the justifying the doubtful one, (a peruke maker,) or for finding a better. Accordingly he himself became bound in 5000*l.* Mrs. *Shirley* (his mother,) in 2500*l.* and Mr. *John Bennifold*, peruke-maker, in 2500*l.* The earl's counsel *now* moved to discharge the recognizance. To which the lady's counsel afterwards consented.

A *habeas corpus* having issued in the last vacation, at the instance of *John Wilkes*, esq; to bring up the body of *Mary Wilkes*, wife of the said *John Wilkes*, and daughter of the said *Mary Mead*, before Mr. justice *Denison*; Mrs. *Mead* now brought her into court. The substance of the return was, That her husband (having used her very ill,) in consideration of a great sum which she gave him out of her separate estate, consented to her living alone, executed articles of separation, and covenanted (under a large penalty) never to disturb her or any person with whom she should live. That she lived with her mother, at her own earnest desire, and that this writ of *habeas corpus* was taken out with a view of seizing her by force, or some other bad purpose. The court held this to be a formal renunciation by the husband, of his marital right to seize her, or force her back to live with him. And they said that any attempt of the husband to seize her by force and violence, would be a breach of the peace. They also declared that any attempt made by the husband, to molest her in her present return from *Westminster-Hall*, would be a contempt of the court. And they told the lady, she was at full liberty to go where, and to whom she pleased. See *Rex v. Clarkson et al.* 2 *Strange* 444, 445: Where the court only took care that the young lady should be under no illegal restraint, and ordered a tip-staff to see her safe home, to her guardian's, as had been formerly done in lady *Harriot Berkley's* case. *Rex v. Captain Lister, husband of lady Rawlinson*, 1 *Strange* 478. Lady *Vane's* case *M. & H.* 17 G. 2. B. R. Vol. I. N<sup>o</sup> X.

*Habeas corpus*  
for a wife. 1  
Bur. Rep. 542.  
East. 31 Geo.  
2. Rex v.  
Mary Mead.

*Rex v. Johnson*, 1 *Strange* 579. H. 19 G. 2. 2 *Ld. Raym.* 1334 S. C. A child was delivered to its proper *Guardian*, by the court. *Rex v. Smith*, 2 *Strange* 982: Where indeed the boy was only set at liberty; and *Johnson's* case was said to be carried too far, *Rex v. Griffith*. H. 8 W. 3. B. R. And lady *Catherine Annesley's* case.

*Habeas corpus* issued in vacation, and returnable immediately before a judge at his chambers, does not expire, by the coming in of the term; but the defendant may be brought into court at Westminster upon the old writ. 1 Bur. Rep. 460. Hil. 31 Geo. 2. *Rex v. Dr. Shebbeare*.

The doctor was brought up to be bailed. But had not bail ready. Note—He was now brought up by virtue of a *habeas corpus* issued by the lord chief justice in the vacation, returnable immediately before himself at his chambers. Upon Dr. *Shebbeare's* mentioning that he had been informed “That, as the term was begun, it was necessary to take out a new writ of *habeas corpus*, to bring him into court;” And the officers on the crown-side having said that their notion of the practice was, “That, the term being begun, the old writ was expired, and it was necessary to take out a new one;” the lord *Mansfield* declared the court to be unanimously of opinion that such notion was ill founded; That a person might be brought into court upon a *habeas corpus* issued in the vacation; and that to require a new writ, would be attended with delay and expence, without the least reason or utility. Lord *Mansfield*—If you have not bail, we cannot commit you to the same custody you came hither in, (which was that of Mr. *Carrington*, one of the king's messengers;) but must commit you to our marshal: And you will then be obliged to sue out your *habeas corpus* again; but may be brought up from the prison of this court, by a rule of court, whenever you shall be prepared to give bail. Accordingly, the doctor, being charged with two warrants under the hand and seal of the secretary of state, which appeared upon the return to the *habeas corpus*, was COMMITTED to the custody of the marshal of this court.

An impressed man in custody at the Savoy, brought up by his bail, in order to be surrendered by them in their discharge, was first committed to the Marshal, with orders to deliver him in-  
stantly to the keeper of the Savoy; and an *exoneratur* was entered. 1 Bur. Rep. 339. East. 30 G. 2. Bond v. Isaac.

The defendant being brought into court, in obedience to a writ of *habeas corpus* applied for by his bail; and it being agreed that He was in custody of the keeper of the Savoy, as an *impressed man*; the counsel in behalf of the bail insisted upon their right to SURRENDER Him.

Cur' (namely, Lord *Mansfield*, Mr. just. *Denison*, and Mr. just. *Foster*) had no doubt of their right: but only hesitated as to the disposition of Him, after He had been surrendered. Lord *Mansfield* mentioned the clause in the pressing act (V. 29 G. 2. c. 4. s. 14. p. 175.) of not taking Him out of the service. Mr. just. *Denison* cited two cases; viz. 1 *Strange* 641. The case of the bail of *Boise* and *Sellers*, in this court; where the defendants were returned to be charged with two civil suits and several *Exchequer informations* for frauds in the customs: and when the court was satisfied of the reality of the debts and priority of the actions here, the defendants were surrendered, and committed to the Marshal. And a case in Tr. 22, 23 G. 2. *Rex v. Chitty*, B. R. where the defendant was returned to be charged with a contempt in the *Exchequer*: He was surrendered by his bail here; and committed to the marshal; who was immediately served with a new *habeas corpus*, to remove him to the Fleet.

This man is a foldier now: and by this act cannot be taken out of the king's service, but upon some criminal matter (V. the act, as above.) So that it seems that He may be remanded to the Savoy, in the present case.

Mr.

Mr. juft. *Foster* — In the cafes cited by my brother *Denifon*, the proceedings were grounded on 25 *Ed. 3. c. 19.* (which enacts “ that the King’s debtors fhall not be protected from the proceedings of their other creditors againft them : ) and it was a matter of *right*. This is an *indulgence* to the bail, to permit them to bring in the defendant and furrender him. But we cannot take him out of the King’s *service* ; this not being a *criminal* matter : ( V. *ut fupra*, 29 *Geo. 2. c. 4. f. 14.* ) So that We may, after We have entered an *exoneretur* upon the bail-piece, remand him to the legal cuftody at the *Savoy*.

Lord *Mansfield* — We may *firft* commit him to the marſhal ; and *then* remand him, immediately, to the *Savoy*.

Suppoſe him to be a ſoldier at *large* ( not in cuſtody ; ) and that his bail were to bring him in and ſurrender him : He muſt be committed to the cuſtody of the *Marſhal* upon ſuch ſurrender ; but *inſtanter ſet at large* : And ſo we may do here. And accordingly, *per Cur.* He was, upon being ſurrendered by his bail, firſt committed to the cuſtody of the *Marſhal* : but the *Marſhal* was ordered to deliver him *inſtanter* to the keeper of the *Savoy* ; and he did ſo, immediately in court. And an *exoneretur* was ordered to be entered upon the bail-piece.

On *Saturday* laſt, the 24th of *January*, a motion was made for a *habeas corpus* to be directed to *Turlington*, the keeper of a private *mad-houſe*, commanding him to bring up the body of Mrs. *Deborah d’Vebre*, who was confined there by her own huſband. The court thought it fit to have a previous inſpection of Her, by proper perſons, phyſicians and relations ; and then to proceed, as the truth ſhould come out upon ſuch inſpection. And a caſe was hinted at where an inſpection was ordered, in the laſt term. A rule was accordingly made, “ That doctör *Robert Monroe*, *Peter Bodkin*, ( her relation ) and *Edmund Kelly* ( her attorney ) ſhall at all proper times and reaſonable hours, reſpectively be admitted and have free acceſs to Mrs. *Deborah d’Vebre*, the wife of *Gabriel d’Vebre*, in the affidavit mentioned, at the *mad-houſe* kept by *Robert Turlington*, at *Chelſea*, in order to conſult with, adviſe and aſſiſt the ſaid *Deborah d’Vebre*.” On *Monday* the 26th, an affidavit of Dr. *Monroe*’s was read ; and Dr. *Monroe* alſo perſonally aſſured the court, “ That He had ſeen and converſed with this woman, and examined her nurſe ; and ſaw no ſort of reaſon to ſuſpect that ſhe was or had been diſordered in her mind : on the contrary, He found Her to be very ſenſible, and very cool and diſpaſſionate.” Lord *Mansfield* — Take a writ of *habeas corpus* : and if this ſhould appear to be the caſe we ought to go further. Mrs. *d’Vebre* was now brought into court by Mr. *Turlington*. But no return was indorſed upon the writ. She appeared to be abſolutely free from the leaſt appearance of insanity. She was prepared to have ſworn articles of the peace againſt her huſband ; and they were offered in court, ready ingroſſed ; but not being ſtamped, they could not be read. She was permitted to go away with her attorney, to his houſe, He undertaking to produce her here to-morrow morning. Note — She deſired not to go back to the *mad-houſe* : and the court would not permit her huſband to take Her, under the preſent circum-

stances of danger apprehended by Her from Him. It afterwards ended in a compromise, and an agreement to separate.

21 Jac. 1.  
c. 26.

**Stat. 21 Jac. 1. c. 26.** [*A. D. 1623. intituled*] "An act against such as shall levy any fine, suffer any recovery, knowledge any statute, recognizance, bail or judgment, in the name of any other person or persons not being privy and consenting thereto."

"Whereas it is of late grown to be a great and general grievance to his majesty's subjects within the realm of *England*, and the dominion of *Wales*, that many lewd persons of base condition, for every little reward or recompence, have of late years used, and still do use to levy fines, and suffer recoveries of lands and other hereditaments, to acknowledge statutes, recognizances, bails and judgments, in the name or names of any other person or persons not privy or consenting to the same, which hath and daily doth turn to the great inquietation, charge, trouble and undoing of many of the good subjects of this kingdom, and the rather, for that there is no remedy in law to reform these and the like abuses:

It is felony to  
levy a fine,  
suffer a reco-  
very, &c. in  
another's  
name not  
privy thereto.

1 Vent. 301.  
Jones Sir T.  
64.

This felony  
shall not cor-  
rupt the blood,  
nor take away  
dower.

An attorney  
may do it for  
another man.

Where bail is  
personated, he  
cannot be dis-  
charged till  
the offender  
is convicted.  
1 Vent. 301.  
Mich. 28  
Car. 2. in  
B. R. Beasley's  
case.

**Sec. 2.** "For remedy whereof, Be it enacted by the king's most excellent majesty, the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all and every person and persons, which at any time after the end of this present session of parliament shall acknowledge, or procure to be acknowledged, any fine or fines, recovery or recoveries, deed or deeds inrolled, statute or statutes, recognizance or recognizances, bail or bails, judgment or judgments, in the name or names of any other person or persons not privy or consenting to the same, and being thereof lawfully convicted or attainted, shall be adjudged, esteemed and taken to be felons; (2) and suffer the pains of death, and incur such forfeitures and penalties, as felons in other cases convicted or attainted, do by the laws of *England* lose and forfeit, without the benefit or privilege of clergy to be allowed to any such offender or offenders. (3) Provided always, That such attainder shall not be any corruption of blood, nor loss of dower to the wife, but the next heir shall have the lands whereof such persons attainted died seised, and such wife her dower, as if no such attainder had been had.

**Sec. 3.** "Provided always, and be it likewise enacted by the authority aforesaid, That this act shall not extend to any judgment or judgments acknowledged by any attorney or attornies of record, for any person or persons against whom any such judgment or judgments shall be had or given."

He was taken in execution upon a recognizance of bail, and he made it appear to the court, That he never acknowledged the recognizance, but was personated by another; and thereupon it was moved, that the bail might be vacated and he discharged, as was done in *Cotton's case*, 2 *Cro.* 256. But the court said, Since 21 *Jac. c. 26.* by which this offence was made felony (without clergy,) it is not convenient to vacate it until the offender is convicted; and so it was done 22 *Car. 2.* in *Spicer's case*; where-

wherefore it was ordered, that *Beasley* should bring the money into court, and be let at large to prosecute the offender. *Twifden* said, It must be tried in *Middlesex*, tho' the bail was taken at a judge's chambers in *London*, because filed here; and the entry is *venit coram Domino Rege, &c.* so it differs from a recognizance acknowledged before my lord *Hobart*, upon 23 *H. 8.* at his chamber, and recorded in *Middlesex, Hob. Rep. 195, 196.* If a false bail is acknowledged, it is not felony, unless it be filed, and so held in *Timberley's* case.

Two people put in bail in feigned names, and because there were no such persons, they could not be prosecuted for *personating* bail on the stat. *cause for the pillory.* 21 *Jac. 1. c. 26.* so the court ordered them and the attorney to be set in the pillory, which was done accordingly. *1 Stran. 384. Trin. 6 G. 1.*

A bail taken before a judge is not a bail within this statute till it be filed of record, and if it be not filed, the acknowledging thereof in another's name makes not felony, but a misdemeanor only. *1 Hale H. P. C. 696.* But this is made felony by the following statute.

**Stat. 4 Will. & Ma. c. 4.** [*A. D. 1692. intituled*] "An act for taking special bails in the country, upon actions and suits depending in the courts of *King's Bench, Common Pleas, and Exchequer at Westminster.*" *4 Will. & M. c. 4.*

"For the greater ease and benefit of all persons whatsoever, in taking the recognizances of special bails upon all actions and suits depending, or to be depending, in any of the courts of *King's Bench, Common Pleas, or Exchequer at Westminster,* Be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That the chief justice, and other the justices of the court of *King's Bench* for the time being, or any two of them, whereof the chief justice for the time being to be one for the said court of *King's Bench,* and the chief justice of the court of *Common Pleas,* and other the justices there for the time being, or any two of them, whereof the chief justice of the same court to be one for the said court of *Common Pleas,* and also the chief baron and barons of the quoir of the court of *Exchequer* for the time being, or any two of them, whereof the chief baron for the time being to be one for the said court of *Exchequer,* shall or may, by one or more commission or commissions under the several seals of the said respective courts, from time to time, as need shall require, empower such and so many persons, other than common attorneys and solicitors, as they shall think fit and necessary, in all and every the several shires and counties within the kingdom of *England,* dominion of *Wales,* and town of *Berwick upon Tweed,* to take and receive all and every such recognizance or recognizances of bail or bails, as any person or persons shall be willing or desirous to acknowledge or make before any of the persons so empowered in any action or suit, depending or hereafter to be depending in the said respective courts, or any of them, in such manner and form, and by such recognizance or bail-piece, as the

Chief justice, &c. may make any persons, except attorneys and solicitors, commissioners to take bail in the country:

Justices, &c. to receive the bail-piece upon affidavit of due execution.



justices and barons of the said respective courts have used to take the same; which said recognizance or recognizances of bail or bail-piece, so taken as aforesaid, shall be transmitted to some or one of the justices or barons of the said respective courts where such action or suit shall be depending, who, upon affidavit made of the due taking of the recognizance of such bail or bail-piece by some credible person present at the taking thereof, such justice or baron shall receive the same upon payment of such fees as have been usually received for the taking of special bails by the justices and barons clerks, and other the officers of the said respective courts; which recognizance of bail or bail-piece so taken and transmitted, shall be of the like effect as if the same were taken *de bene esse* before any of the said justices and barons; for the taking of every which recognizance or recognizances of bail or bail-piece, the person or persons so empowered shall receive only the sum or fee of two shillings, and no more.

Bail taken below to be *de bene esse*.  
Commissioners fee.

Power given to justices, &c. to make rules for justifying, but not to order the person's appearance.

London, &c. saved.

Justices of assize may take bail.

Felony for any person to be bail in another man's name.

*Sec. 2.* "And be it further enacted by the authority aforesaid, That the justices and barons respectively in the several courts shall make such rules and orders for the justifying of such bails, and making of the same absolute, as to them shall seem meet, so as the cognizor or cognizors of such bail or bails be not compelled to appear in person in any of the said courts, to justify him or themselves, but the same may and is hereby directed to be determined by affidavit or affidavits duly taken before the said commissioners, who are hereby empowered and required to take the same, and also to examine the sureties upon oath, touching the value of their respective estates; unless the cognizor or cognizors of such bail do live within the cities of *London* and *Westminster*, or within ten miles thereof.

*Sec. 3.* "And be it further enacted by the authority aforesaid, That any judge of assize in his circuit shall and may take and receive all and every such recognizance and recognizances of bail or bails, as any person shall be willing and desirous to make and acknowledge before him, which being transmitted in like manner as aforesaid, shall (without oath) be received in manner as aforesaid, upon payment of the usual fees.

*Sec. 4.* "And be it further enacted by the authority aforesaid, That any person or persons, who shall (before any person or persons empowered by virtue of this act, as aforesaid, to take bail or bails) represent or personate any other person or persons, whereby the person or persons so represented and personated may be liable to the payment of any sum or sums of money for debt or damages to be recovered in the same suit or action, wherein such person or persons are represented and personated, as if they had really acknowledged and entred into the same, being lawfully convicted thereof, shall be adjudged, esteemed, and taken to be felons, and suffer the pains of death, and incur such forfeitures and penalties as felons in other cases convicted or attainted do by the law of *England* lose and forfeit."

## Baker.

A BAKER is a person whose *trade* is to bake. *Johns.* By statute 29 Car. 2. c. 7. [*A. D.* 1676. intituled, “An act for the better observation of the Lord’s day, commonly called *Sunday*”] *sect.* 1. it is enacted, “That no *tradesman*, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business or work of their ordinary callings, upon the Lord’s day, or any part thereof, works of necessity and charity only excepted”——

*Sect.* 3. “Provided, that nothing in this act contained shall extend to the prohibiting of dressing of meat in families, or dressing or selling of meat in inns, cooks shops or victualling houses, for such as otherwise cannot be provided”——

The court had granted a rule for the defendant, a justice of peace for the county of *Middlesex*, to shew cause why an information should not be granted against him, for *refusing to receive* an information regularly and duly laid before him against a baker for exercising his *trade on a Sunday*, contrary to the statute of 29 Car. 2. c. 7. (“for the better observation of the Lord’s day;”) Mr. Cox giving it as a reason for his refusal, “That the justices of *Middlesex* and of *Westminster* had come to such an agreement amongst themselves, not to receive such informations.” They laid the stress of the case upon the justices’ *refusal to receive* the information at all: though Mr. justice *Foster* on the original motion, thought that there was no need to *receive* it, if the justice was of opinion, upon its being opened to him, “that the case stated to him was *not* an offence within the act,” And he intimated his *own* opinion, pretty strongly, “that it was *not so*; and that it was better that *one* baker and his men should stay at home, than *many* families and servants.” He said He was as much for the observation of the Sabbath, as any one: but he did not think a Pharisaical or a Jewish observation of it to be necessary. Lord *Mansfield* likewise at the same time hinted His opinion, “that the Sabbath would be much more generally observed by a baker’s staying at home to bake the dinners of a number of families, than by his going to church, and those families or their servants staying at home to dress dinners for themselves.” However, they all agreed that it would be by no means amiss, that the justices at *Hicks’s Hall* should have an opportunity of knowing the *opinion of this* court upon this subject: and (for that purpose principally, as it seemed to Me,) they granted a rule to shew cause. Mr. serjeant *Nares* and Mr. *Stowe* now shewed cause; and observed that the charge was not for baking *bread*, but for baking puddings, pies, and other such things for dinner. And that the act of 29 Car. 2. c. 7. *f.* 3. allows of *dressing meat*, on a *Sunday*, for dinner; and excepts works of *necessity* and charity. And all the justices of peace of *Middlesex* and *Westminster* have agreed, that *this* is not an offence which that statute meant

Baking puddings, pies, and such things on a Sunday, is not an offence meant by stat. 29 Car. 2. c. 7. but is within the equity of the proviso in the 3d session of it, as a cook’s shop; and within the exception of works of necessity and charity.  
2 Bur Rep. 785—788.  
East. 32  
Geo. 2. Rex v. Benjamin Cox, esq.

meant to punish. And this gentleman, Mr. Cox, *heard* the whole complaint, and then declared the opinion of himself and of his brethren, "That it was *not* an offence within the meaning of the act of parliament or any other law: for that He and the other justices considered it as a cook's shop, and as a matter of necessity, and of relief to poor people."

Mr. Norton, Mr. Morton, and Mr. *Ashurst contra*, for the information, cited two cases of *Rex v. Sergeson*, and *Rex v. Dawson*. This does not appear, they said, to have been a baking for the *poor only*, or for the *poor at all*; which cannot be presumed: so that it does not appear to be a work of charity or necessity. Nor is it to be ranked under the appellation or nature of a cook's shop; and consequently not within the proviso in the third section.

Lord Mansfield — The complaint now appears to have been founded upon a misrepresentation of the fact: for the affidavit charges this justice of peace to have refused *receiving* the information; and that He told them the justices had come to an agreement "not to grant warrants against persons for *baking* on a Sunday." Whereas it now appears that He *did hear* the charge; and that it was *not baking in general* on a Sunday; but *baking pies, puddings and meat for dinner*; not saying a word about *bread*, which is the business of a baker's ordinary calling. And He told them, "That this sort of baking or *dressing meat* on a Sunday was not, in his opinion, and in the opinion of the rest of the justices, an offence within the act." I am not satisfied that their opinion was wrong. And if he *really* judged it not to be within the provision of any law, and had consulted his brethren who thought so too, the court would never grant an information against him; even though such opinion had been erroneous.

Mr. justice Denison — This court will never grant an information against a justice of peace for a mere error in judgment. And He declared that He thought the justices to be in the right in their opinion; and that this was *not* a case within the meaning of the law: it seems to be within the *equity*, tho' not within the words of the proviso of sect. 3. Therefore the rule ought to be discharged. Mr. justice Foster concurred that the rule ought to be discharged. He was clear that this case was not within the provision of the act: but it falls within the exception of works of necessity and charity, and also within the proviso, as being a cook's shop. And it is as reasonable that the baker should *bake* for the poor, as that a cook should roast or boil for them: there is no reason for any distinction. And as the justice has acted rightly, and also upon right motives, the rule ought to be discharged *with costs*. A justice of peace has a right to judge for himself, whether the matter charged is an offence within the law: and if upon hearing the charge opened, he thinks it *not* to be an offence within the law, he ought not to proceed upon it; which could be to no purpose, but merely to put persons to unnecessary trouble and charge. Mr. just. Wilmot — It comes out now, that the justice did *not* refuse to *hear* and *receive* the complaint; though when it was opened to him, He judged that he ought not to *proceed* upon it. And in this he judged right: for it is not an offence within the provision of the act; it is particularly within the equity of the exception of *cooks shops*. Therefore I think

think the justice had no jurisdiction to proceed upon the complaint. I think that no justice of peace ought to be punished by an information, for an error in judgment. But I think that the justice was in the *right* in the present case. And therefore that the rule ought to be discharged *with costs*. *Per cur.* Rule discharged with costs.

## Ballast.

**B**ALLAST is something put at the bottom of a ship to keep it steady. *Johns.*

**Stat.** 34 & 35 Hen. 8. cap. 9. [*A. D.* 1542. intituled] “An act for the preservation of the river of *Severn*.” 34 & 35 Hen. 8 c. 9.

**Sec.** 6. “And be it also enacted by the authority aforesaid, That no person or persons, after the first day of *August* next coming, do cast or unlade out of any manner of ship, crayer, or any other vessel, being within any haven, road, channel, or river, flowing or running to any port-town, or to any city, borough, or town within this realm, or any other the king’s dominions, any manner of ballast, rubbish, gravel, or any other wreck or filth, but only upon the land above the full sea mark; (2) upon pain that every person and persons offending this act, to lose and forfeit for every time so offending 5*l.* the one half to the king our sovereign lord, and the other half thereof to such person and persons as will sue for the same, by bill, plaint, original writ, or information, in any the king’s courts of record, in which action or suit, no wager of law shall be admitted, nor any effoin or protection allowed.” The penalty for casting of ballast, rubbish, &c. into any channel, haven, road, or river.

**Stat.** 19 Geo. 2. c. 22. [*A. D.* 1746. intituled] “An act for the better preservation of havens, roads, channels, and navigable rivers, within that part of *Great Britain* called *England*.” 19 Geo. 2. c. 22.

“Whereas masters and owners of, and other persons belonging to ships, crayers, or other vessels coming into havens, ports, roads, channels, or navigable rivers, within that part of *Great Britain* called *England*, do cast, throw out, and unlade their ballast, either on the shore, or on the side, and below the usual full sea-mark, and frequently do other annoyances, to the detriment and obstruction of navigation, and the offenders often go unpunished, for want of a further and more speedy method of bringing them to justice: For remedy whereof, may it please your majesty, that it may be enacted; and be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if at any time, from and after the first day of *June* one thousand Masters, &c. throwing out ballast, &c.

out of any  
ship, &c. in  
harbour, &c.

but upon dry  
land only.  
Justices may  
issue warrants,

and upon  
proof, &c.

fine them not  
more than 5l.  
nor less than  
50s.

Penalties how  
recoverable.

thousand seven hundred and forty-six, any master or owner, or any person acting as master of any ship, pink, crayer, lighter, keil-boat, or other vessel whatsoever, shall cast, throw out, or unlade; or if at any time, from and after the day aforesaid, there shall be cast, thrown out, or unladen from and out of any ship, pink, crayer, lighter, keil-boat, or other vessel whatsoever, being or riding within any haven, port, road, channel, or navigable river, within that part of *Great Britain* called *England*, any ballast, rubbish, gravel, earth, stone, wreck, or filth, but only upon the land where the tide or water never flows or runs; it shall and may be lawful for any one or more justice or justices of the peace for the county, city, town corporate, liberty, or place, where or near which such offence shall be committed, upon information thereof, and he and they are hereby authorized and required, to summon, or issue out his or their warrant or warrants, to apprehend and bring before him or them the master or masters, owner or owners of any such ship, pink, crayer, lighter, keil-boat, or other vessel, or other person or persons acting as such, against whom such complaint or information shall be made or given; and upon his, her, or their appearance or default, to proceed to examine the matter of fact, and upon due proof made (either by the confession of the party offending, or on view of such justice or justices, or upon the oath or oaths of one or more credible witness or witnesses, which oaths the said justices are hereby impowered and required to administer) that any ballast, rubbish, earth, gravel, stone, wreck, or filth, had been cast, unladen, or thrown out of, or from any ship, pink, crayer, lighter, keil-boat, or other vessel, the master or masters, or person or persons acting as master or masters thereof, shall be adjudged, and he and they are hereby respectively declared to be the offenders against this act; and he and they being by such justice or justices (or any of the ways and means aforesaid) thereof convicted, shall forfeit and pay for every such offence any sum, not exceeding the sum of five pounds, nor under fifty shillings, at the discretion of such justice or justices, the one moiety thereof to the informer, and the other moiety thereof to the overseers of the poor of the parish, town, or place wherein such conviction shall be pronounced, for the use of the poor there.

*Sec. 2.* " And be it further enacted, That the penalties inflicted or incurred by this act, shall be recovered and levied by distress and sale either of the goods and chattels of the persons so convicted respectively as aforesaid, or of the ship, pink, crayer, lighter, keil-boat, or other vessel, or of their tackle, apparel, or furniture (by warrant or warrants under the hand and seal, or hands and seals of such justice or justices, and which he and they are hereby impowered and required, on such conviction as aforesaid to make, and to direct the same to the constables, or to the tythingman, or other proper officer of the parish, town, or place where such warrants are respectively to be executed; and which warrants the constables and tythingmen, and officers aforesaid are hereby respectively required to execute) together with the charges of such distress and sale, rendering the overplus (if any be, after demand in writing) to the respective owners thereof;

thereof; and for want of sufficient distress, the said justice or justices are hereby empowered and required to commit such master or masters, or person or persons acting as such, and so convicted as aforesaid, to the common gaol of the county, city, town corporate, or to the house of correction of the county where the offenders shall be respectively convicted as aforesaid, there to remain for the space of two months, or until payment shall be made of the penalties and forfeitures, or so much thereof, as for the nonpayment of which such commitment shall be.

*Sec. 3.* "And whereas it frequently happens, that ships and vessels are run on shore, sunk, or stranded in harbours, ports, channels, and navigable rivers, or are brought or drove into the same in a ruinous or shattered condition, and the owner, or some other person having, or pretending to have the command or power of such ship or vessel, frequently ship off or take away the rigging, tackle, and other valuable parts thereof, and permit the hulk to sink in the sand, in such harbours and places as aforesaid, and there to remain; and great damages often happen thereby, not only by other ships and vessels sticking or running thereon, but by filling up the channel in such harbours and places, so as to render the same impracticable, or very difficult or dangerous for navigation, before the same can be removed by any of the laws now in being: Now, for the more effectually remedying such mischiefs for the future, Be it further enacted by the authority aforesaid, that as soon as any ship or vessel shall, after the said first day of *June*, be sunk, stranded, or run on shore in any harbour, port, channel, or navigable river, or shall be brought or drove in, or be there in a ruinous or shattered condition as aforesaid, and permitted to remain there, and the owner, or some other person having, or pretending to have any property therein, or the command or power thereof, or any other person or persons by their or any of their order, privity, or assent, shall begin to take down, or carry away any of the rigging or tackle, or if there shall not be any person to take care of the said ship or vessel, it shall be lawful for any one or more justice or justices of the peace for the county or place where or near such fact, accident, or offence shall happen, upon information thereof, and they are hereby authorized and required, to summon, or issue out his or their warrant or warrants to apprehend and bring before him or them the owner, or other person having, or pretending to have the command or power over such ship or vessel; and upon his or their appearance, or default, to proceed to examine the matter of fact, in manner and form aforesaid; and in case, upon such examination, such justice or justices shall find any owner, or other person having, or pretending to have the command or power over such ship or vessel, or any of the persons aforesaid, guilty of such offence as aforesaid, such justice or justices shall, and he and they is and are hereby required to issue his and their warrant or warrants for seizing and removing such ship or vessel, and also the rigging or tackle thereof, in such manner as such justice or justices shall order and direct; and if the owner, or such other person aforesaid, shall not within five days give security, according to the approbation of such justice or justices, to clear the harbour, port, channel, or river of such vessel, and of all wreck, and

For want of distress to be committed.

Ship sunk or stranded, &c.

in an harbour, and permitted to remain there,

Justices to summon the owner, &c.

and upon conviction, to issue warrants for seizing and removing the ship and tackle,

and unless the parts owner give

security with- parts belonging to the same, and pay the charges and expences of seizing, in 5 days, removing, and disposing of such ship or vessel, tackle or furniture, then to to make sale cause the hulk, rigging, or tackle to be sold, and with or out of the money of the same. arising by such sale to pay the charges and expences of clearing the harbour or place where such ship or vessel shall lie; and also the charges and expences of seizing, removing, and selling such ship, vessel, furniture, and tackle, rendering the overplus, if any be, to the owner or owners of such manor where the same shall happen."

Justices to execute this act indifferently.

*Sec. 4.* "And be it further enacted by the authority aforesaid, That all and every the justices aforesaid may, and they are hereby respectively authorized and required to put this act in execution against any person or persons within their several jurisdictions, although such justice or justices shall or may be rated or assessed, or do, or shall, or may actually pay for or towards the maintenance or relief of the poor of any parish, town, or place, in which any conviction in pursuance of this act shall be pronounced; any law or statute to the contrary thereof notwithstanding."

Convictions to be final.

*Sec. 5.* "And be it also enacted that all convictions, to be pronounced by the authority of this act, shall be final to all intents and purposes, not to be appealed from, or removed into any court of record at *Westminster*."

Distress not to be sold till after 5 days.

*Sec. 6.* "Provided always, and it is hereby further enacted, That none of the distresses to be at any time made by virtue of this act, or any part of such distresses, shall be sold till after the expiration of five days from the day of making such distresses respectively; but that it shall and may be lawful to and for the persons convicted in the mean while (to wit, at any time before the expiration of the said five days) to redeem such distress, by payment of the money for which the same shall have been made by virtue hereof, to and for the uses and purposes of this act, together with the costs and charges of and for the making, seizing, and detaining such distresses."

Limitation of the powers of this act.

*Sec. 7.* "Provided nevertheless, that nothing in this act contained shall extend, or be construed to extend, to take away, abridge, diminish, or alter any right, benefit, or lawful use, that the lord or lords, lady or ladies of any manor or manors adjoining to or bordering upon any haven, port, road, channel, or river, or that any other person or persons whatsoever hath or have to such haven, port, channel, or river, or to the banks, shores, or sides thereof, or any fishery, manufactures, or royalties therein; nor extend to the casting out, unlading, or throwing out of any ship, pink, crayer, lighter, keil-boat, or other vessel, any stone, rocks, bricks, lime, or other materials, used, or to be used, in or towards the building, amending, repairing, and keeping in repair, any quay, pier, wharf, wear or bridge, or the banks or sides of any haven, port, road, channel, or navigable river within this realm; but, on the contrary, this act shall be construed and taken to prevent the mischiefs to be done in, or to, or upon the said havens, ports, roads, channels, or rivers, which may any ways tend to obstruct, prejudice, incommode, hinder, or do any annoyance in the said havens, ports, roads, channels, or rivers, or prejudice the navigation therein, and not otherwise."

*Sec.*

*Sett.* 8. " Provided also, that nothing herein contained shall extend to take away, abridge, diminish or limit any former or other jurisdiction, or right, or remedy, to punish any nuisance to be done or committed in any haven, port, road, channel, or navigable river.

THIS was a special verdict from *Northumberland* assizes, upon an action of trespass for breaking and entering the plaintiff's ship in the river *Tyne*, at *Newcastle* upon *Tyne*, and taking and carrying away an anchor — : to which the defendant pleaded " Not guilty". The special verdict finds that the defendant was a justice of the peace of and for the town and county of *Newcastle* upon *Tyne*; and that the plaintiff was master of a ship called the *Leeds-Merchant*, floating, &c. in the river *Tyne*, being a navigable river: that 3 tons of ballast and more were unloaded out of the said ship, INTO a machine or vessel called a *hopper*, in the said river *with intent* that it should be carried therein, into the high and open seas; And that it *was accordingly carried out of the said river into the high and open sea*, and was *there* cast out of the said *hopper*, where the water was more than 14 fathom deep, at a distance from any port, haven, channel or navigable river. It finds that *Thomas Field*, before the time of the supposed trespass, *viz.* on such a day, &c. came before the defendant being a justice of peace, &c. and laid " information of the facts of" putting the ballast *into the hopper with an intent that it should be dropped out of the said hopper INTO the WATER*, and *NOT be cast*, &c. upon the *LAND where the tide and water never flows or runs;*" *contrary* to the statute. It finds that the plaintiff was summoned to appear, and that he did appear before the said justice; and that proof was then and there made, by his confession, " That it was so put *on board the hopper*, in the said river, *with intent* that it should be therein carried out of the said river *into the high and open sea*, and cast *therein* at the depth of 14 fathom and upwards, at the distance from any haven, &c. (*ut supra*) where the tide or water never flows or runs." It is found that the defendant thereupon *convicted* the plaintiff, and adjudged him to be an offender against the statute of 19 G. 2. c. 22. Then it finds the conviction before the justice, *in hæc verba*; and that the then defendant (the now plaintiff) was adjudged to forfeit 2 l. 10 s. for the said offence. It finds that the justice of peace (the now defendant) issued his warrant under his hand and seal, to levy the same by distress, &c. And that *William Bruce* a serjeant at mace (to whom the warrant was directed,) by virtue of the said warrant, took the said anchor, &c.

This case was first argued on *Friday* the 9th of *June* last, by Mr. *Winn* for the plaintiff; and Mr. serjeant *Pool* for the defendants. Mr. *Winn* — rehearsed the statute of 19 G. 2. c. 22. s. 1, 2. And said that the fact found to have been *proved*, is *no offence within* this act: And consequently, the defendant was a trespasser in levying the penalty. Nothing is found to have been proved but a *mere* INTENTION. This is a *penal* law, and must be construed *strictly*. 34, 35 H. 8. c. 9. s. ult. gives the penalty for casting rubbish into havens, roads, channels, &c. Then 19 G. 2. c. 22. describes the offence to be casting, throwing, out, or unlading any ballast, rubbish &c. " BUT ONLY upon the LAND, where the tide or water never flows or runs." And the preamble describes the mischief to be " Casting, throwing out, and unlading their ballast, either on the shore, or on the side, and *below* the usual

Navigation may not be obstructed by casting rubbish, or unlading ballast, in any havens, roads, channels, &c. but only upon the land, where the tide never flows, by Stat. 34 & 35 Hen. 8. c. 9. and 19 Geo. 2. c. 22. the unloading it into a hopper, with intent to carry it out to sea: an offence against the express provision of the latter act, which says " That it shall not be discharged but only upon land;" but putting it into a hopper, in order to carry it upon land, would not be so, nor shifting it out of one ship into another, with intention to drop it any where. 2 Bar. Rep. 656. Mich. 32 Geo. 2. in B. R. *Bruckishbank v. Smith Esq.*



## Ballast.

usual and full sea-mark, and doing other annoyances, *to the detriment and obstruction of navigation.* In the *Thames*, this method of disposing of the ballast is never treated as an offence: And that is under the care and inspection of the *Trinity-House*. The mischief which the legislature had in view, was throwing the ballast, &c. either on the shore, or on the *sides of rivers*, and below the full sea-mark. But this was in the open and high sea, above 14 fathom deep, at a distance from any port, haven, channel, or river. He relied upon the *intention* and *spirit* of this law, rather than upon the *letter* of it: which intention of the act, he said, would plainly appear from the proviso at the end of it, (*V. sect. penult.*) and that was intended solely to prevent prejudice to the navigation, in havens, ports, roads, channels or rivers, and for no other purpose. But nothing is stated here of any sort of prejudice actually done to the navigation, or even of any such intention to prejudice the navigation of the haven, port, road, channel or river. The ballast was carried *out of* the river, into the high and open sea; and there cast out, at above 14 fathom depth, and at a distance from any port, haven, channel, or river.—And the *intention only* is laid accordingly. And the confession is of nothing more than *such* an intention. But there is neither proof nor confession of any *fact* whatsoever: Nor was any *actual* injury done.

Mr. serjeant *Pool contra*, for the defendant — It was impossible for us, in the nature of the thing, to *prove* “That the ballast was ACTUALLY dropped in the river:” For this is done privately from the bottom of the hopper. It was necessary therefore for us to charge the *intent* as the offence. And this intent the defendant has *confessed*. And the *offence*, as we have charged it, is within the act; *viz.* “Putting the ballast into the hopper, with intent, &c. This is a *positive law*, “That no person shall cast, throw out, or discharge out of, &c. any ballast, &c. BUT ONLY upon the land, where the tide or water *never flows or runs.*” To which positive law the fact charged is *directly contrary*. The present act of 19 G. 2. was made to enforce and make more easy the prosecuting offences against the former statute of 34, 35 H. 8. upon which it was difficult to prosecute the offender, in some cases. And here are proper exceptions, upon proper occasions: In all other respects it is a general law. It is said indeed, on the part of the plaintiff, “That here is no actual prejudice done to the navigation.” But what the plaintiff has done, *may*, by some means or other prejudice the navigation of the river: It is in their power to drop the ballast out of this hopper, in the *channel* of the river, without any possibility of being discovered. And this statute is in negative words, *viz.* BUT ONLY upon the land.” *Co. Lit.* 115. affirms that there is a diversity between an act of parliament in the negative, and one in the affirmative; and shews such diversity. Therefore he prayed judgment for the defendant.

Mr. *Winn*, in reply — This act ought to be construed *strictly*; as it is a restraint of a common-law right which a man has to lay his ballast where he pleases; provided he be not guilty of a nuisance, in so doing. And this is no offence against the *spirit* and *intention* of this law. Nothing is charged, but an *intent*. Which intent was not, even if it had been *executed*, a *substantial* offence against this law. Lord MANSFIELD — This is a *general* question

question, which goes further than this particular case. Mr. justice *Foster* asked if the corporation of *Newcastle* were not conservators of the river *Tyne*. It was answered "That they were." Mr. justice *Foster*—Corporations ought to be protected in their just and ancient rights. The court did not upon this first argument, give any opinion: but it was ordered to stand for a further argument. *ULTERIUS CONCILIUM*. And now, Mr. *Clayton* argued on behalf of the plaintiff, as before, "That this fact was found *not* an offence within the act." Mr. *Norton* was going to answer him on the part of the defendant. But

Lord *Mansfield* stopped him, from entering into it at all; it being a very plain case, and clearly against the *express* prohibition of the act: which provides that it shall *not* be thrown *BUT upon the land*. Whereas this man says that he has found a better way, than that which the act has *expressly* prescribed. But here is such an opening to fraud, in this way that he has thought a better one, that it would be dangerous to trust to this method, though it were not prohibited. However, it is enough, that it is contrary to the *direct* and *express* provision of the act. Indeed, if it was put upon the hopper, *in order merely to carry it upon the LAND*; that would only be the proper means of doing it, and therefore would not be an offence against the act. But this is with intent to lay it in the *WATER*. And there can be no security as to the *place where* the hopper may drop it. It is mighty easy, from the construction of the hopper, to drop it privately: and it is also the interest of the person who carries in the hopper, to drop it as soon as he can; that he may come the sooner again, to fetch more. The shifting it out of one ship into another, *WITHOUT intention to drop it ANY where*, would not be a case within the act: for that would not be a *casting or throwing out* at all, *within* the meaning of the act. The other three judges agreed, in terms, with lord *Mansfield*; and all of them spoke explicitly to the same effect. *Per cur.* unanimously, judgment for the defendant.

*For regulating ballastage and lassage in the river Thames, see 6 Geo. 2. c. 29. 11 Geo. 2. c. 12. 18 Geo. 2. c. 21. 32 Geo. 2. c. 16.*  
See **Rivers.**

## Bankrupt.

**BANKRUPT** is a trader, who secrets himself, or does certain other acts, tending to defraud his creditors. 2 *Black. Com.* 285. The word itself is derived from the word *bancus* or *banque*, which signifies the table or counter of a tradesman (1 *Du Fresne* 969.) and *ruptus*, broken; denoting thereby one whose shop or place of trade is broken and gone; though others rather choose to adopt the word *route*, which in *French* signifies a *trace* or *track*, and tell us that a bankrupt is one who hath removed

moved his banque, leaving but a trace behind. (4 *Inst.* 277.) And it is observable that the title of the first *English* statute concerning this offence, viz. 34 *Hen. 8. c. 4.* “against such persons as do make bankrupt,” is a literal translation of the *French* idiom, *qui font banque route.* 2 *Black. Com.* 472. *Cowell.*

The granting commissions of bankruptcy seems to be derived from the civil law, which constituted a guardian to a prodigal in the same manner as to a madman; and such guardian the pretor appointed on the petition or application of relations as well as creditors; but the feudal law, though it admitted of commissions of lunacy *ex necessitate*, would allow of none for prodigality, which was not reckoned injurious; because such prodigal could not alien his lands without leave of the lord; and the condition of a freeman was not to be altered without the crime of felony: but as trade and commerce increased, it was found necessary for the support of credit, to introduce such a law amongst us, and therefore our acts of parliament have confined it to traders and creditors only. 1 *Bac. Abr.* 246. *Lege duodecim tabularum prodigo interdictur bonorum suorum administratio; quod moribus quidem ab initio introductum est. Sed solent hodie prætores, vel præsides, si talem hominem invenerint, qui neque tempus neque finem expensarum habet, sed bona sua dilacerando et dissipando profudit, curatorem ei dare, exemplo furiosi: Et tamdiu erunt ambo in curatione, quamdiu vel furiosus sanitatem, vel ille sanos mores receperit; quod si evenerit, ipso jure [id est, quando certum est, eos neque furere amplius, neque prodigos esse] desinunt esse in potestatem curatorum.* Dig. lib. 27. tit. 10.

A bankrupt was formerly considered merely in the light of a criminal or offender; (stat. 1 *Jac. 1. c. 15. secl.* 17.) and in this spirit we are told by Sir *Ed. Coke*, (4 *Inst.* 277.) that we have fetched as well the name, as the wickedness, of bankrupts from foreign nations. But at present the laws of bankruptcy are considered as laws calculated for the benefit of trade, and founded on the principles of humanity as well as justice; and to that end they confer some privileges, not only on the creditors, but also on the bankrupt or debtor himself: on the creditors; by compelling the bankrupt to give up all his effects to their use, without any fraudulent concealment: On the debtor; by exempting him from the rigour of the general law, whereby his person might be confined at the discretion of his creditor, though in reality he has nothing to satisfy the debt; whereas the law of bankrupts, taking into consideration the sudden and unavoidable accidents to which men in trade are liable, has given them the liberty of their persons, and some pecuniary emoluments, upon condition they surrender up their whole estate to be divided among their creditors. 2 *Black. Com.* 472.

In this respect our legislature seems to have attended to the example of the *Roman* law. I mean not, says Mr. *Blackstone*, the terrible law of the twelve tables; whereby the creditors might cut the debtor's body into pieces, and each of them take his proportionable share: if indeed that law, *de debitore in partes secando*, is to be understood in so very butcherly a light; which many learned men have with reason doubted. Nor do I mean those  
less

less inhuman laws (if they may be called so, as *their* meaning is indisputably certain) of imprisoning the debtor's person in chains; subjecting him to stripes and hard labour, at the mercy of his rigid creditor; and sometimes selling him, his wife, and children, to perpetual foreign slavery *trans Tiberim*; an oppression, which produced so many popular insurrections, and successions to the *mons sacer*. But I mean the law of *cession*, introduced by the Christian emperors; whereby if a debtor ceded, or yielded up, all his fortune to his creditors, he was secured from being dragged to a gaol, "*omni quoque corporali cruciatu semoto.*" For, as the emperor justly observes, *inhumanum erat spoliatum fortunæ suis in solidum damnare.*" Thus far was just and reasonable: but, as the departing from one extreme is apt to produce its opposite, we find it afterwards enacted, that if the debtor by any unforeseen accident was reduced to low circumstances, and would swear that he had not sufficient left to pay his debts, he should be compelled to cede or give up even that which he had in his possession: a law, which under a false notion of humanity, seems to be fertile of perjury, injustice, and absurdity. 2 *Black. Com.* 473.

The laws of *England*, more wisely, have steered in the middle between both extremes: providing at once against the inhumanity of the creditor, who is not suffered to confine an honest bankrupt after his effects are delivered up; and at the same time taking care that all his just debts shall be paid, so far as the effects will extend. But still they are cautious of encouraging prodigality and extravagance by this indulgence to debtors; and therefore they allow the benefit of the laws of bankruptcy to none but actual *traders*; since that set of men are, generally speaking, the only persons liable to accidental losses, and to an inability of paying their debts, without any fault of their own. If persons in other situations of life, run in debt without the power of payment, they must take the consequences of their own indiscretion, even though they meet, with sudden accidents that may reduce their fortunes: for the law holds it to be an unjustifiable practice, for any person but a trader to incur himself with debts of any considerable value. If a gentleman, or one in a liberal profession, at the time of contracting his debts, has a sufficient fund to pay them, the delay of payment is a species of dishonesty, and a temporary injustice to his creditor: and if, at such time, he has no sufficient fund, the dishonesty and injustice is the greater. He cannot therefore murmur, if he suffers the punishment which he has voluntarily drawn upon himself: but in mercantile transactions the case is far otherwise. Trade cannot be carried on without mutual credit on both sides; the contracting of debts is therefore here not only justifiable, but necessary. And if by accidental calamities, as by the loss of a ship in a tempest, the failure of brother traders, or by the non-payment of persons out of trade, a merchant or trader becomes incapable of discharging his own debts, it is his misfortune and not his fault. To the misfortune therefore of debtors, the law has given a most compassionate remedy, but denied it to their faults; since, at the same time that it provides for the security of commerce, by enacting that every considerable trader may be declared a bankrupt for the benefit of his creditors as well

as himself, it has also to discourage extravagance declared, that no one shall be capable of being made a bankrupt, but a *trader*, nor capable of receiving the full benefit of the statutes, but only an *industrious* trader.

2 *Black. Comment.* 473, 474.

The first statute made concerning any *English* bankrupts was 34 *Hen. 8. c. 4.* when trade began first to be properly cultivated in *England*; which has been almost totally altered by statute 13 *El. c. 7.* 2 *Black. Com.* 474.

34 & 35.

*Hen. 8. c. 4.* such persons as do make bankrupt."

*Stat. 34 & 35 Hen. 8. c. 4.* [*A. D. 1542. intituled*] "An act against

Complaints.

Order.

Sale.

"Where divers and fundry persons, craftily obtaining into their hands great substance of other mens goods do suddenly flee to parts unknown, or keep their houses, not minding to pay or restore to any their creditors, their debts and duties, but at their own wills and pleasures consume the substance obtained by credit of other men, for their own pleasure and delicate living, against all reason, equity and good conscience: Be it therefore enacted by authority of this present parliament, That the lord chancellor of *England*, or keeper of the great seal, the lord treasurer, the lord president, lord privy seal, and other of the king's most honourable privy council, the chief justices of either bench for the time being, or three of them at the least, whereof the lord chancellor or keeper of the great seal, lord treasurer, lord president, or the lord privy seal, to be one, upon every complaint made to them in writing by any parties grieved concerning the premisses, shall have power and authority, by virtue of this act, to take by their wisdoms and discretions, such orders and directions, as well with the bodies of such offenders aforesaid, wheresoever they may be had, or otherwise, as also with their lands, tenements, fees, annuities, and offices, which they have in fee-simple, fee-tail, term of life, term of years, or in the right of their wives, as much as the interest, right and title of the same offender shall extend or be, and may then lawfully be departed with, by the said offender, and also with their money, goods, chattels, wares, merchandizes, and debts, wheresoever they may be found or known. And to cause their said lands, tenements, fees, annuities, offices, goods, chattels, wares, merchandizes and debts to be searched, viewed, rented, and appraised, and to make sale of the said lands, tenements, fees, annuities and offices, as much as the same offender may then lawfully give, grant or depart with, or otherwise to order the same for true satisfaction and payment of the said creditors: that is to say, to every of the said creditors, a portion rate and rate like, according to the quantity of their debts. And that every direction, order, bargain, sale, and other things done by the said lords authorized, as is aforesaid, in writing signed with their hands, by authority of this act, shall be good and effectual in the law to all intents constructions and purposes against the said offenders, their heirs and executors for ever, as though the same order, direction bargain and sale had been made by the said offender or offenders, at his or their

OWN

own free-will and liberty, by writing indented inrolled in any the king's courts of record.

*Stat. 2.* “ And be it also further enacted by the authority aforesaid, That if after any such act or offence committed, and complaint thereof made to the said lords as is aforesaid, any party grieved concerning the premises, knowing, supposing, or suspecting any of the goods, chattels, wares, merchandises or debts of such offender or offenders, to be in custody, use, occupying, keeping, or possession of any person or persons, or any person or persons to be indebted to any such offender or offenders, do make relation thereof to the said lords, to whom authority is given by this present act, as is aforesaid: that then the said lords shall by virtue hereof have full power and authority to send for and convent afore them by such process, ways or means, as they shall think convenient by their discretions, all and every such person and persons so known, supposed or suspected, to have any such goods chattels, wares, merchandises, or debts in his or their custody, use, occupation, keeping or possession, or supposed or suspected, to be indebted to such offender or offenders: and upon their appearance to examine them and every of them as well by their oaths, as otherwise by such ways and means, as the said lords by their discretions shall think meet and convenient, for and upon the specialty, certainty, true declaration and knowledge, of all and singular such goods, chattels, wares, merchandises, and debts of any such offenders as be supposed or suspected to be in his or their custody, use, occupation or possession, and of all such debts, as by them or any of them shall be supposed or suspected to be owing to any such offender; and if any such person or persons upon such examination do not disclose, plainly declare and shew the whole truth of such things as he or they shall be examined of concerning the premises: then every such person or persons so examined, and not declaring the plain and whole truth concerning the premises, upon due proof thereof to be made before the said lords therefore authorised, as is aforesaid, by witness, examination, or otherwise, as to the same lords shall seem sufficient in that behalf, shall lose and forfeit double the value of all such goods, chattels, wares, merchandises, and debts by them or any of them so concealed and not wholly and plainly declared and shewed; which forfeiture shall be levied and recovered by the said lords having authority as is aforesaid, by such ways and means as to them shall seem requisite and convenient. And the same forfeiture to be distributed and employed to and for the satisfaction and payment of the debts of the said creditor or creditors, in such like manner, rate and form as is above declared, concerning the ordering of the goods and chattels of the said offenders, keeping their houses, or flying to places unknown, as is aforesaid.

*Stat. 3.* “ And be it also further enacted by the authority aforesaid, That if, after any such person or persons shall keep his or their houses, or flee to parts unknown, as is aforesaid, any person or persons do fraudulently by covin or collusion claim or demand any debt, duty, or other thing by writing or otherwise, of any such offender or offenders, or other than such as he or they can and do prove to be due by right, and conscience in form

aforesaid, before the said lords having authority by this present act, as is aforesaid, and the same to proceed *bona fide*, without fraud or covin: That then every such person and persons, so craftily demanding or claiming any such debt, duty or other thing, as is aforesaid, shall forfeit and lose double as much as he or they shall so claim or demand, and the same forfeiture to be levied, recovered and employed, in manner and form as is afore rehearsed.

Collusions.

*Seet. 4.* “ And be it also further enacted, by the authority aforesaid, That if any such person or persons, which shall keep his or their houses, or flee to parts unknown, as is aforesaid, or intent to delay or defraud their creditors deceitfully by covin or collusion, suffer or cause any other person or persons, to recover against him or them any debts, goods, chattels, wares, or merchandizes, without just cause and title so to do, proceeding *bona fide*, without fraud or covin, that then upon complaint thereof made to the said lords having authority by this present act, as is aforesaid, the same lords, shall have power and authority by virtue hereof to convent and call before them the said recoverer or recoverers, and after such fraud, deceit, covin or collusion, shall plainly appear, or be duely proved before the said lords authorised, as is aforesaid, all the said goods and chattels of the said offender so recovered, shall be chargeable, employed, ordered and delivered toward the payment of the true and due debts of the said creditor, after the manner, form and rate, as is afore specified, by the discretion of the said lords, having authority by this present act, the aforesaid false and fained recoveries notwithstanding; so that always such false and fained recoveries shall not be in force, or any execution thereby had of or upon any goods chattels, lands, or tenements, of any such offender or offenders, until such time as all his or their true and due debts and duties shall be fully satisfied, contented and payed to his or their creditors. And nevertheless, after that the said true debts and duties shall be fully satisfied and payed, as is aforesaid, as well the body of the said offender, as his land, tenements, goods and chattels, shall be charged and liable to the execution of the said recovery according to the tenor, force, and effect of the same.

Execution.

*Seet. 5.* “ And be it also enacted by the same authority, That if any such person or persons which shall be indebted, do withdraw himself out of this realm, and other the king's dominions, into any foreign realm, or country, to the intent thereby to abide and remain, in defraud of his creditors:

Complaint.

that then upon complaint in writing concerning the premisses thereof made to the said lords having authority, as is aforesaid, the same lords shall by virtue and authority of this present act, have full power and authority to

Proclamation.

award proclamations to be made in such places as to them shall be thought meet and convenient, commanding by the same such offender, in the king our sovereign lord's name, to return with all convenient speed into this realm, and to yield his body before the said lords, having authority as is aforesaid, or one of them. And if the said person, within three months next after he shall have knowledge of such proclamation, or as soon after as he conveniently may, do not repair and yield his body as is aforesaid, that then the body of all and every such offender and offenders shall be judged taken

taken and deemed to all intents and purposes out of the king's protection, and that also all goods, chattels, lands, tenements, and debts of every such offender shall be, by the order and discretion of the said lords employed and distributed amongst his creditors equally and indifferently rate for rate, in like manner and form as is afore declared. And that also every person or persons, that shall willingly help to aid, imbezil or convey any such person or persons, their said goods, chattels, wares, or merchandizes out of this realm, and other the king's dominions, into any foreign realm or place, knowing the said person or persons to depart or withdraw themselves, or convey their said goods, chattels, wares, and merchandizes for the cause and intent aforesaid, shall suffer such pains by imprisonment of their bodies, or pay such fine to our sovereign lord the king, his heirs or successors, as to the said lords, having authority by virtue of this present act, shall seem meet and convenient for their said offence or offences.

*Sett.* 6. " Provided always, and be it enacted by the authority aforesaid, Creditors. That if the creditors of any such offender or offenders, which shall keep his or their house or houses, or which shall absent or withdraw themselves into places unknown, for the cause aforesaid, be not fully satisfied and paid or otherwise contented for their debts and duties, by the ways and means afore specified and declared, that then the said creditor and creditors, and every of them, shall and may have their remedy for the recovery and levying of the residue of the same debts or duties, whereof they shall not be fully satisfied and paid, or otherwise contented in form aforesaid, against the said offender or offenders in like manner and form as they should or might have had, before the making of this act; and that the said creditor, and creditors, and every of them, shall be only barred and excluded by virtue of this act, of and for all and every such part and portion of the said debts and duties, as shall be paid, satisfied, distributed, or delivered unto him or them by the said lords, having authority as is aforesaid, and of no more portion or parcel thereof; any thing herein specified that may be taken or construed to the contrary notwithstanding.

**Stat.** 13 *Eliz. c. 7.* [*A. D. 1570. intituled*] " An act touching or- 13 *El. c. 7.*  
ders for bankrupts."

" Forasmuch as notwithstanding the statute made against bankrupts Who is a  
in the thirty-fourth year of the reign of our late sovereign lord king bankrupt,  
*Henry* the eighth, those kind of persons have and do still increase into how and by  
great and excessive numbers, and are like more to do, if some better whom his  
provision be not made for the repression of them, and for a plain decla- body, lands,  
ration to be made and set forth, who is and ought to be taken and deem- and goods  
ed for a bankrupt: (2) Therefore be it enacted and established by the shall be order-  
authority of this present parliament, That if any merchant or other per- ed for pay-  
son, using or exercising the trade of merchandize, by way of bargaining, ment of the  
exchange, rechange, bartry, chevifance, or otherwise, in gross or by re- creditors.  
tail; (3) or seeking his or her trade of living, by buying and selling; 34 & 35 H.  
(4) and being subject-born of this realm, or of any the queen's do- 8. c. 4.  
minions, 4 Inst. 277.  
Cro. El. 13.



1 Bulstr. 134.  
Who shall be  
said a bank-  
rupt.

minions, or denizen; (5) thence the first day of this present parliament, hath, or at any time hereafter shall depart the realm; (6) or begin to keep his or her house or houses, or otherwise to absent him or her self; (7) or take sanctuary; (8) or suffer him or her self willingly to be arrested for any debt or other thing, not grown or due for money delivered, ware sold, or any other just or lawful cause, or good consideration or purposes, (9) hath or will suffer him or her self to be outlawed, or yield him or herself to prison, or depart from his or her dwelling-house or houses, (10) to the intent or purpose to defraud or hinder any of his or her creditors, being also a subject-born, as is aforesaid, of the just debt or duty of such creditor or creditors, shall be reputed, deemed and taken for a bankrupt."

The lord  
chancellor  
may grant a  
commission to  
take order for  
bankrupts bo-  
dies, lands  
and goods.  
The authority  
of the com-  
missioners.  
2 Bulstr. 26,  
236, &c.

Sett. 2. " And be it enacted by the authority aforesaid, That the lord chancellor of *England*, or lord keeper of the great seal of *England*, for the time being, upon every complaint made to him in writing, against such person or persons being bankrupt, as is before defined, shall have full power and authority by commission under the great seal of *England*, to name, assign and appoint such wise and honest discreet persons as to him shall seem good: (2) Who, or the most part of them by virtue of this act and of this commission, shall have full power and authority to take by their discretions such order and direction with the body and bodies of such person wheresoever he or she may be had, either in his or her house or houses, sanctuary or elsewhere, as well by imprisonment of his or her body or bodies; (3) as also with all his or her lands, tenements, hereditaments, as well copy or customaryhold, as freehold, which he or she shall have in his or her own right before he or she became bankrupt; (4) and also with all such lands, tenements, and hereditaments as such person shall have purchased, or obtained for money, or other recompence, jointly with his wife, children or child, to the only use of such offender or offenders; (5) or of, or for such use, interest, right or title as such offender or offenders then shall have in the same, which he or she may lawfully depart withal; (6) or with any person or persons of trust to any secret use of such offender or offenders; (7) and also with his or her money, goods, chattels, wares, merchandizes and debts wheresoever they may be found or known; (8) and cause the said lands, tenements, fees, annuities, offices, goods, chattels, wares, merchandizes and debts to be searched, viewed, rented and appraised to the best value they may; (9) and by deed indented, inrolled in one of the queen's majesty's courts of record, to make sale of the said lands, tenements and hereditaments, and of all deeds, writings and evidences touching only the same, belonging to such offender or offenders, debtor or debtors; and also of all fees, annuities, offices, goods and chattels; (10) or otherwise to order the same for true satisfaction, and payment of the said creditors; that is to say, To every of the said creditors a portion rate-like, according to the quantity of his or their debts: (11) And that every direction, order, bargain, sale and other thing done by the said persons so authorized, as is aforesaid, shall be good and effectual in the law, to all intents, con-

The commis-  
sioners may  
sell bankrupts  
lands, goods,  
&c.  
March 36.

structions

structions and purposes, against the said offender or offenders, debtor or debtors, his or their wife or wives, heir or heirs, child and children, and such person and persons as by such joint purchase with the said offender or offenders, as is aforesaid, have or shall have any estate or interest in the premises; (12) and against all other person or persons claiming by, from, or under such offender or offenders, debtor or debtors, by any act or acts had, made or done after any such person shall become bankrupt, as is aforesaid; (13) and also against the lords of the manors, whereof the said copyhold or customary lands been holden, their heirs, successors, and assigns, and every of them.

Against what persons the commissioners sale of a bankrupt's lands, goods, &c. shall be available.  
2 Co. 25.  
Cro. Car. 149.  
Hob. 287.

*Sett.* 3. " Provided always, and be it enacted by the authority aforesaid, That all and every person or persons, to whom any such sale of copyhold or customary lands or tenements shall be made, shall, before such time as they or any of them shall enter or take any profit of the same lands or tenements, agree and compound with the lords of the manors of whom the same shall be holden, for such fine or incomes as heretofore hath been most usual and accustomed to be yielded or paid therefore: (2) and that upon every such agreement or composition, the said lords for the time being, at the next court to be holden at or for the said manors, shall not only grant unto the said *Vendee* or *Vendees*, upon request, the same copy or customary lands or tenements by copy of court-roll of the same manors for such estate or interest as to them shall be so sold, and reserving the ancient rents, customs and services; but also in the same court admit them tenants of the same copy or customary lands, as other copyholders of the same manors have been wont to be admitted, and to receive their fealty accordingly."

Vendees of copyhold lands shall compound with the lord of the manor for their fines.

*Sett.* 4. " Provided always, and be it enacted by the authority aforesaid, That such of the said commissioners as shall put the said commission in execution, shall, upon lawful request to them made by the said bankrupts, not only make a true declaration to the same bankrupt, of the employing and bestowing of their said lands, tenements, offices, fees, goods, chattels and debts so paid and satisfied to their said creditors, but also make payment of the overplus of the same, if any such shall be, to the said bankrupts, their executors, administrators or assigns."

The commissioners shall declare to the bankrupt how they have bestowed his lands and goods.

*Sett.* 5. " And be it further enacted by authority aforesaid, That if after any such act or offence committed, and complaint thereof made to the said commissioners so to be appointed, as is aforesaid, or the more part of them, by any party grieved, as is aforesaid, concerning the premises, knowing, supposing, or suspecting any of the goods, chattels, wares, merchandises, or debts of such offender or offenders, debtor or debtors, to be in the custody, use, occupying, keeping or possession of any person or persons; or any person or persons to be indebted to any such offender or offenders, do make relation thereof to the said commissioners so to be appointed, or the more part of them; that then the said commissioners, or the most part of them, shall, by virtue hereof and of the said commission, have full power and authority to send for, and call before them by such process, ways or means as they shall think convenient

The remedy where goods or debts of bankrupts be in the hands of others.

venient by their discretions, all and every such person and persons so known, suspected, or supposed to have any such goods, chattels, wares, merchandizes, or debts in his or their custody, use, occupation, keeping or possession, or supposed, or suspected to be indebted to such offender or offenders; (2) and upon their appearance, to examine them and every of them, as well by their oaths as otherwise, by such ways and means as the said commissioners, or the more part of them by their discretions shall think meet and convenient, for and upon the specialty, certainty, true declaration and knowledge of all and singular such goods, chattels, wares, merchandizes, and debts of any such offender or offenders, as be supposed or suspected to be in his or their custody, use, occupation or possession, and all such debts as by them or any of them shall be supposed or suspected to be owing to any such offender or offenders.

The penalty of such as be examined, that will not disclose the truth, or refuse to swear.  
Farther provision relating hereto.  
1 Jac. 1. c. 15. f. 10.

How the forfeiture shall be recovered and employed.

A remedy against them who do detain the goods of bankrupts.

*Sett. 6.* "And if any such person or persons, upon such examination, do not disclose and plainly declare, and shew the whole truth of such things as he or they shall be examined of concerning the premises to his knowledge, or do deny to swear, then every such person or persons so denying to swear, or being examined, do not declare the plain and whole truth concerning the premises, upon due proof thereof to be made before the said commissioners, or the more part of them so to be appointed, as is aforesaid, by witness, examination, or otherwise, as to the said commissioners, or the more part of them shall seem sufficient in that behalf, shall lose and forfeit double the value of all such goods, chattels, wares, merchandizes and debts, by them or any of them so concealed, and not wholly and plainly declared and shewed: (2) which forfeiture shall be levied by the said commissioners, or the more part of them, of the lands, tenements, hereditaments, goods and chattels of such person so denying to swear, or not disclosing the whole truth as is aforesaid, by such ways and means, and in such manner and form, as is before limited and appointed for the principal offender or offenders, debtor or debtors; (3) and the same forfeiture or forfeitures to be distributed or employed to and for the satisfaction and payment of the debts of the said creditor or creditors, in such-like manner, rate and form as is before declared concerning the ordering of the lands and tenements, offices, fees, goods and chattels of such offender or offenders, debtor or debtors, as is aforesaid.

*Sett. 7.* "And be it further enacted, That if at any time, before or after that any such person or persons departeth the realm, or shall keep his or their house or houses, or otherwise absent him or themselves, or take sanctuary, or suffer him or themselves to be arrested, outlawed, or yield his or their bodies to prison, as is aforesaid, any person or persons do fraudulently by covin or collusion, claim, demand, recover, possess, or detain any debts, duties, goods, chattels, lands or tenements, by writing, trust or otherwise, which were or shall be due, belonging or appertaining to any such offender or offenders, other than such as he or they can and do prove to be due by right and conscience, in form aforesaid, for money paid, wares delivered, or other just consideration or cause reasonable, to the just value thereof, before the said commissioners so to be appointed, or the

more

more part of them, as is aforesaid, and the same to proceed (*bona fide*) without fraud or covin: that then every such person or persons so craftily demanding, claiming, having, possessing or detaining any such debt, duty, or other thing, as is aforesaid, shall forfeit and lose double as much as he or they shall so claim, demand, detain or possess; which said forfeiture shall be levied, recovered and employed in manner and form as is afore rehearsed.

*Sett.* 8. " Provided also, and be it enacted by the authority aforesaid, That if it shall fortune the creditors of any such bankrupt, as is aforesaid, to be satisfied and paid off their debts and duties of or with the proper lands, tenements, goods, chattels and debts of the said bankrupts, or of or with the same, and some part of the forfeitures of the said double values to be forfeited, as is aforesaid, and that there shall remain an overplus of the said forfeitures of the said double values, that then the one moiety of the said overplus of the said forfeitures of the double values so remaining, shall be by the said commissioners so executing the said commission, within convenient time after the levying thereof, paid unto the queen's majesty, her heirs and successors; and the other moiety thereof shall be, by the said commissioners, employed and distributed to and amongst the poor within the hospitals in every city, town or county where any such bankrupt shall happen to be; any thing in this act to the contrary thereof notwithstanding.

*How the forfeitures shall be bestowed after the bankrupts debts be paid.*

*Sett.* 9. " And be it further enacted by authority aforesaid, That if any such person or persons which is or shall be indebted, do of purpose withdraw him or themselves out of or from his or their usual mansion-house or houses, that then upon complaint thereof made to the said commissioners having authority, as is aforesaid, the same commissioners, or the more part of them, shall, by virtue and authority of this present act, have full power and authority to award five proclamations to be made in the queen's name upon five sundry market-days, in such places near the place where such bankrupt hath most commonly dwelled or made his abode, commanding him or them, by the same proclamation in the queen's name, to return with all convenient speed, and to yield his or their body before the said commissioners, having authority, as is aforesaid, or one of them, at such time and place as by the said proclamation shall be appointed: (2) and if the said person do not according to such proclamation, repair and yield his or their body, as is aforesaid, that then the body of all and every such offender or offenders shall be adjudged, taken and deemed, to all intents and purposes, out of the queen's protection: (3) and that also every person and persons, that shall willingly and wittingly help to hide or convey, or shall willingly and wittingly receive, detain or keep secretly, any person or persons so demanded by proclamation, as is aforesaid, shall suffer such pains by imprisonment of his or their bodies, or pay such fine to our sovereign lady the queen's majesty, her heirs and successors, as to the said lord chancellor or lord keeper of the great seal (being informed thereof) by the commissioners so to be appointed, as is aforesaid, or the more part of them, shall seem meet and convenient for their said offence or offences.

*A remedy against him who withdraweth himself from his dwelling place.*

*The penalty of a bankrupt not yielding himself after proclamation, and of such as do hide or receive him.*

A remedy for the creditor, if he be not satisfied for his whole debt.

*Seet.* 10. "Provided always, and be it further enacted, That if the creditors of any such offender or offenders, debtor or debtors which so do depart the realm, keep his or their house or houses, or otherwise absent, or withdraw him or themselves into places unknown, or take sanctuary, or will suffer him or themselves to be arrested or outlawed, or yield his or their bodies into prison purposely, and for the causes aforesaid, be not fully satisfied, or otherwise contented for their debts and duties, by the ways and means before specified and declared; that then the said creditor or creditors, and every of them, shall and may have their remedy for the recovery and levying of the residue of their said debts or duties, whereof they shall be fully satisfied, paid, or otherwise contented in form aforesaid, against the said offender or offenders, in like manner and form as they should and might have had before the making of this act: (2) and that the said creditor or creditors, and every of them, shall be only barred and excluded, by virtue of this act, of and for every such part and portion of the said debts and duties as shall be paid, satisfied, distributed or delivered unto him or them, by order of the said persons, as is aforesaid, and of no more portion or parcel thereof; any thing herein specified that may be taken or construed to the contrary notwithstanding.

Lands, &c. extendable, which be purchased, or do descend to a bankrupt. 1 Cr. 568.

*Seet.* 11. "Provided always, and be it also enacted by the authority aforesaid, That if any person or persons, which is or shall be published and declared to be a bankrupt by virtue of this act, shall at any time after purchase any lands, tenements, hereditaments, free or copy, offices, fees, goods or chattels: (2) or that any lands, tenements, hereditaments, free or copy, offices, fees, goods or chattels, shall descend, revert or by any means come to any such person or persons, being bankrupts, as is aforesaid, before such time as their debts due to their creditors shall be fully satisfied and paid, or otherwise agreed for; (3) that then the said lands, tenements, hereditaments, as well free as copy, offices, fees, goods and chattels, shall by virtue of this act, by the said commissioners to be appointed, as is aforesaid, or the more part of them, be bargained, sold, extended, delivered and used for and towards the payment of the said creditors, in such like manner and form as other the lands, tenements, hereditaments, free or copy, offices, fees, goods and chattels of the said bankrupts, which they had when they were declared first to be bankrupts, should or might have been bargained, sold, disposed, or used by virtue of this act.

Lands conveyed away before the party become bankrupt. Moor 504 pl. 805. 2 Co. 26.

*Seet.* 12. "Provided always, that this act shall not extend to any lands, tenements or hereditaments, free, or copyhold, which heretofore have been assured by any such bankrupt, or hereafter shall be assured by any bankrupt before he became bankrupt: so that always such assurance be made *bona fide*, and not to the use of the bankrupt himself only, or of his heirs: (2) and that the parties to whose use such assurance hath or shall be made, be not, at or before the making of such assurance, privy or consenting to the fraudulent purpose of any such bankrupt, to deceive his creditors. 21 Jac. 1. c. 19.

**Stat.** 1 Jac. 1. c. 15. [A. D. 1603. Intituled] “An act for the better relief of the creditors against such as shall become bankrupts.”

For that fraud and deceits, as new diseases, daily increase amongst such as live by buying and selling, to the hindrance of traffick and mutual commerce, and to the general hurt of the realm, by such as wickedly and willfully become bankrupts: (2) and for that the description of a bankrupt in former statutes is not so fully expressed, nor the power given thereby to the commissioners for bankrupts so large as is meet, in such cases of deceit, to prevent the deceitful actions of bankrupts:

An exposition and addition to the statute of bankrupts, made 34 & 35 H. 8. c. 4. 13 Eliz. c. 7.

**Set.** 2. For remedy whereof, Be it further enacted by our sovereign lord the king, and by the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That all and every such person and persons using, or that shall use the trade of merchandize, by way of bargaining, exchange, bartery, chevance, or otherwise in gross, or by retail, or seeking his, her, or their trade of living by buying and selling, and being a subject-born of this realm or any the king's dominions, or denizen, who at any time sithence the first day of this present parliament, or at any time hereafter shall depart the realm; (3) or begin to keep his or her house or houses, or otherwise to absent him or her self, to take sanctuary; (3) or suffer him or her self willingly to be arrested for any debt, or any thing not grown or due for money delivered, wares sold, or any other just or lawful cause or good consideration or purposes, (4) or hath or will suffer him or her self to be outlawed, or yield him or her self to prison, (5) or willingly or fraudulently hath or shall procure him or her self to be arrested, or his or her goods, money or chattels, to be attached or sequestred, (6) or depart from his or her dwelling-house, (7) or make or cause to be made any fraudulent grant or conveyance of his, her, or their lands, tenements, goods or chattels, (8) to the intent, or whereby his, her or their creditors, being subjects born as aforesaid, shall and may be defeated or delayed for the recovery of their just and true debts, (9) or being arrested for debt, shall after his, or her arrest, lie in prison six months or more upon that arrest, or upon any other arrest or detention in prison for debt, and lie in prison six months upon such arrest or detention, (10) shall be accounted and adjudged a bankrupt to all intents and purposes.

Who shall be adjudged a bankrupt. 1 Bull. 134. in part repealed by 10 Annæ, c. 15. f. 1.

**Set.** 3. “And be it further enacted by the authority of this present parliament, That the like commissions, orders, benefits and remedies, which are and be provided and limited by the said former act of parliament (made in 13 nuper *Eliz. Regine*) against any bankrupts therein described, or for or concerning his, her or their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandizes and debts, or any of them, shall be had, pursued, taken and expounded against such person and persons that are herein expressed to be bankrupts, his, her and their lands, tenements, hereditaments, fees and annuities, offices, goods, chattels, wares, merchandizes and debts, in such like manner and form as the same ought or might have been, if the persons herein described to be bankrupts, had

The like commissions, orders, benefits and remedies as be provided for bankrupts by the statute of 13 El. c. 7. 2 Bull. 26.

been described to be bankrupts according to the intent of the said former statute.

New creditors  
partakers with  
the former.

Hob. 287.

Hutt. 37, 42.

*Stat. 4.* " And that it shall be lawful for any of the creditors of the said bankrupt within four months after any such commission shall be sued forth, and until distribution shall be made by the said commissioners for the payment of the bankrupts debt, as in such case hath been used, to partake and join with the other creditors that shall sue forth any such commission, for satisfaction and payment of his, her or their debts, to him or them owing, without any hindrance, let or disturbance of any of the same commissioners, or of any of the other creditors of any such bankrupts, the same creditors so coming in, to contribute to the charges of the said commission; (2) and that if the creditors come not in within four months, then the commissioners to have power to distribute.

A bankrupt  
conveying his  
lands or goods  
to others, or  
transferring  
his debts into  
other mens  
names. Stiles  
288.

*Stat. 5.* " Be it further enacted, That if any person which hereafter is or shall be a bankrupt, by intent of this statute, shall convey or procure, or cause to be conveyed to any of his children or other person or persons, any manors, lands, tenements, hereditaments, offices, fees, annuities, leases, goods, chattels, or transfer his debts into other mens names; (2) except the same shall be purchased, conveyed or transferred for or upon marriage of any of his or her children, both the parties married being of the years of consent, or some valuable consideration, (3) shall be in the power and authority of the commissioners in this behalf to be appointed, or the more part of them, to bargain, sell, grant, convey, demise or otherwise to dispose thereof, in as ample manner, as if the said bankrupt had been actually seized or possessed thereof, or the debts were in his own name, of the like estate or interest to his or their own use, at such time as he or she became bankrupt; (4) And that every such grant, bargain, sale, conveyance and disposition of the said commissioners, or of the greater part of them, shall be good and available to all intents, constructions and purposes in the law, against the offender or offenders, his heirs, executors, administrators and assigns, and such children and persons as shall be subject to this statute, and against all other person and persons claiming by, from or under such offender or offenders, or such said other persons, to whom such conveyance shall be made by the said bankrupt, or by his means or procurement.

In what case  
he that doth  
withdraw him-  
self shall be  
proclaimed a  
bankrupt.

*Stat. 6.* " And for that the practices of bankrupts of late are so secret and so subtil, as that they can very hardly be found out or brought to light; (2) and for that the former statute, giving power to the commissioners to examine others than the bankrupts, hath not fully or sufficiently authorized them to examine the said bankrupt upon oath: (3) for remedy whereof, Be it further enacted by the authority of this present parliament, That the said commissioners may call before them, or the greater part of them, the said bankrupt; (4) and if, upon lawful warning left or made in writing at three several times at the dwelling-place or house where the said bankrupt, his wife or family, for the most part of his abode, did lodge or remain within one year next before he, she or they became bankrupt, the said bankrupt shall not appear before the said commissioners, or the greater part of them, that then and from thenceforth it shall be lawful for the greater

greater number of the said commissioners to appoint to proclaim the said party a bankrupt, at such public place or places where the said commissioners or the greater part of them shall think meet, warning him, her or them to appear before them upon the said commission, at some time appointed; (5) and that if upon five several proclamations made in some public place, the party offending appear not before the said commissioners, and yield his, her or their bodies to them, or some of them, the said commissioners, or the greater part of them, shall or may award a warrant to such fit person or persons as they think meet, to apprehend the body and bodies of the said offender and offenders, and to bring him, her or them so offending, before the said commissioners, wheresoever the said party or parties offending may be found, in place privileged or not, to be examined by the said commissioners, or the greater part of them."

A bankrupt apprehended, which upon warning refuseth to appear.

Sett. 7. "And that it shall be lawful for the said commissioners, or the greater part of them, to examine the said offender or offenders, upon such interrogatories touching the lands, tenements, goods, chattels, debts, bills, bonds, books of account, and such other things as may tend to disclose his, her or their estate, or their secret grants, conveyances, and eloining of his, her or their lands, tenements, goods, money and debts, as they shall think meet."

The examination of a bankrupt.

Sett. 8. "And that if therein the offender or offenders shall refuse to be examined, or to answer fully to every interrogatory to him to be ministered by the said commissioners, or the greater part of them, it shall be lawful for the said commissioners, or the greater part of them, to commit the said offender or offenders to some strait or close imprisonment, there to remain until he, she or they shall better conform him or her self."

A bankrupt refusing to answer.

Sett. 9. "And that if upon his, her or their examination, it shall appear that he, she or they have committed any wilful or corrupt perjury, tending to the hurt or damage of the creditors of the said bankrupt, to the value of ten pounds of lawful money of *England*, or above, the party so offending shall or may thereof be indicted in any of the king's majesty's courts of record, and being lawfully convicted thereof shall stand upon the pillory in some public place by the space of two hours, and have one of his ears nailed to the pillory and cut off."

The punishment of a bankrupt committing perjury.

Sett. 10. "And whereas by the former statute made in the said thirteenth year of the reign of the late queen *Elizabeth*, the commissioners for bankrupts have power given them to send for such person or persons as the creditors shall know, suppose or suspect to have, detain or keep any part of the money, goods, chattels or debts of the said offender or offenders, or to be indebted to the said offender or offenders, to be examined by the said commissioners, as by the same statute appeareth, but have not good means or remedy by imprisonment or other penalty, to procure the person so sent for by them to appear before them, nor having appeared before them, to make answer upon his oath, to such interrogatories as shall be ministered unto him by the said commissioners, for and upon the specialty, certainty, true declaration and knowledge of such lands, tenements, hereditaments, goods, debts or other things, of any such offender or offenders, as be, or shall

13 El. c. 7.



Examination  
of such as have  
Bankrupts  
goods, or be  
indebted unto  
them.

The punish-  
ment of such  
as will not ap-  
pear, or not  
swear to an-  
swer to inter-  
rogatories.

5 Mod. 309.

shall be, or which shall be suspected to be in his custody, use or possession, or in the custody, use or possession of any other to his knowledge, and of all debts owing to or for the benefit of such offender or offenders, by himself or by any other to his knowledge; (2) so as many times a great part of the offender or offenders lands, tenements, hereditaments, goods chattels or debts, which, by the true intent of the said statute, should be employed to the satisfaction of the creditors of the offender or offenders, are concealed or detained in the hands of such person and persons as refuse to come, or being come, refuse to be sworn before the said commissioners, to be examined in that behalf, to the great encouragement of all bankrupts and their wicked confederates and accessories, and to the great hinderance of the just remedies of the creditors of the said bankrupts, for their true and just debts to them owing: (3) for remedy whereof, Be it further enacted by the authority aforesaid, That if any person or persons being known, supposed or suspected to have or detain any part of the lands, tenements or hereditaments, goods, chattels or debts of the said bankrupt, or to be indebted to or for the benefit of the said bankrupt, shall after lawful warning to the said person or persons given, to come before the said commissioners or the greater part of them, to be examined according to the intent of the said statute, refuse to come, or shall not come before the said commissioners at the time appointed, having no lawful impediment (such as shall be limited and allowed of by the said commissioners, or the more part of them, and which shall be then signified or made known to the said commissioners at the time of their assembly); (4) or that any such person or persons, having knowledge or warning of any other assembly or meeting of the said commissioners again, shall not come and appear before them at such time as he or she lawfully may come, having no such lawful impediment, as shall be then made known to the said commissioners, and by them admitted and allowed of, as aforesaid; (5) or being come before them, shall refuse to be sworn, and to make answer to such interrogatories as shall be ministred unto him or them, according to the true intent and meaning of the said statute made in the said thirteenth year of the reign of our said sovereign lady queen *Elizabeth*, or of this present act; (6) that then it shall be lawful for the said commissioners, or for the greater part of them, to commit to such ward and prison, as to them, or to the greater part of them shall be thought meet, all such person and persons as shall so refuse to be sworn, and make answer to such interrogatories as shall be so ministred, as aforesaid, (7) and also to direct their warrants to such person or persons, as to them or the greater part of them shall be thought meet, to apprehend and arrest such person or persons as shall refuse to *come and* appear before them, as aforesaid, and to bring him, her or them before the said commissioners, or the greater part of them, to be examined as abovesaid, (8) and upon his, her or their refusal to come, or to be examined before the said commissioners, as aforesaid, to commit the said party so refusing, to such prison as the commissioners, or the greater part of them, shall think meet, there to remain without bail or mainprize, until such time, as the said person so refusing to come, or to be sworn to answer before the said commissioners, shall submit him

or her self to the said commissioners,<sup>d</sup> and be by them examined, according to the true intent of the said statute, and of this present act.

*Sett.* 11. " Provided always, That such witnesses as shall be so sent for, shall have such costs and charges as the commissioners in their discretion shall think fit; the same charges to be rateably born by the creditors of the said bankrupt, according to the proportion of each of their several debts :

Witnesses allowed their costs.

(2) And if any person or persons, other than the bankrupt, either by subornation, unlawful procurement, sinister persuation, or means of any others, or by his own act, consent or agreement, shall wilfully and corruptly commit any manner of wilful perjury by his deposition to be taken before the said commissioners, or the greater part of them, as aforesaid, That then the party or parties so offending, and all and every person and persons that shall unlawfully and corruptly procure any such unlawful, wilful and corrupt perjury, shall and may therefore be indicted in any of the king's majesty's courts of record, (3) and after his or their conviction thereof, shall incur such forfeiture, and receive and suffer such pains and punishment as are limited by the statute made concerning perjury, in the fifth year of the reign of our late sovereign lady queen *Elizabeth*."

The penalty of others beside the bankrupt committing perjury.

*Sett.* 12. " And be it further enacted, That all and every sum and sums of money, which shall be forfeited by force of this present act, shall be sued for and recovered by the said creditors only, or any of them that will sue for the same, by action of debt, bill, plaint or information, in any of the king's majesty's courts of record; and the sum or sums of money so recovered, the charges of suit being deducted, shall be distributed and divided towards the payment of the said creditors of the bankrupt."

Who shall recover the forfeitures, and how they shall employ them.

*Sett.* 13. " And for that the power and authority given to the commissioners of bankrupts touching the debts due to the said bankrupt, is not so full and perfect, as that the full benefit thereof in due course might be employed to the use of the said creditors, as was intended : (2) For remedy thereof, be it further enacted by the authority aforesaid, That the commissioners of bankrupts, or the greater part of them, shall have power to grant and assign, or otherwise to order or dispose all or any of the debts due or to be due, to and for the benefit of the said bankrupt, by what person or persons soever, or in what manner and form soever, to the use of the creditors of the said bankrupt, according to the true intent of the said former recited statute of bankrupts; (3) and that the same grant, assignment or disposition of the said debts, in form aforesaid, to be made by the said commissioners, or the greater part of them, shall so vest the property, right and interest of the said debt and debts, in the person or persons of him, her or them to whom it shall be granted, assigned or ordered by the said commissioners, or the greater part of them, as fully to all intents and purposes, as if the said bill, bond, bonds, statutes, recognizances, judgment or contract, whereupon the said debt or debts, deed or deeds shall arise or grow, had been made to or with, or for the said person or persons to whom the same shall be so granted, assigned or disposed by

The authority of commissioners touching debts due to a bankrupt.

1 Salk. 108.

There medy  
for the credi-  
tor to recover  
a bankrupt's  
debt assigned  
to him by the  
commission-  
ers.

by the said commissioners; (4) and that after such grant, assignment or disposition made of the said debts, that neither the bankrupt, nor any other to whom any such debt shall be due, shall have power to recover the same, nor to make any release or discharge thereof, (5) neither shall the same be attached as the debt of the bankrupt, or such said other person or persons to whom the same shall be due, by any other person or persons, according to the custom of the city of *London*, or otherwise, (6) but that the party or parties to whom the same debt shall be assigned, shall have like remedy to recover the same, as fully and lawfully, in the name or names of the person or persons to whom the same shall be so granted, assigned or ordered by the said commissioners, in all respects and purposes, as the party himself might have had; any law, statute, use or custom to the contrary thereof in any wise notwithstanding."

*Secl. 14.* " Provided always, That no debtor of the bankrupt be hereby endangered for the payment of his or their debt, truly and *bona fide*, to any such bankrupt, before such time as he shall understand or know that he is become a bankrupt."

Commission-  
ers shall de-  
clare to the  
bankrupt how  
they have be-  
stowed his  
lands and  
goods.

*Secl. 15.* " Provided also, and be it further enacted, That such of the said commissioners as shall put the said commission in execution, shall upon lawful request to them made by the said bankrupt, not only make a true declaration to the said bankrupt of the employing and bestowing of his, her or their said lands, tenements and hereditaments, offices, fees, goods, wares, money, chattels and debts which shall be paid and satisfied to their said creditors, as is in like case limited and appointed by the said former statute made in the said thirteenth year of the said late queen's majesty's reign, but also make payment of the overplus of the same, if any such shall be, to the said bankrupts, their executors, administrators and assigns; (2) and that the said bankrupts, after the full satisfaction of the said creditors, shall have full power and authority to recover and receive the residue and remainder of the debts to them owing; any thing in this act contained to the contrary in any wise notwithstanding."

13 El. c. 7.

The commis-  
sioners plea  
in an action  
brought a-  
gainst them.

*Secl. 16.* " Be it further enacted, That if any action of trespass, or other suit shall happen hereafter to be brought against any commissioner authorized by the statute made in *Decimo tertio* of our late sovereign lady queen *Elizabeth*, for bankrupts, or any other person or persons, having authority by virtue or under the commission authorizing the said commissioner for the doing or executing of any matter by force of the said statute, or this present statute, That the defendant or defendants in any such action or suit may plead not guilty, (2) or otherwise justify, That the act or thing whereof the plaintiff or plaintiffs complained, was done by authority of the said act made in the thirteenth of *Elizabeth*, or in this present act respectively, (3) without expressing or rehearsal of any other matter of circumstance contained in either of the said acts, and without enforcing him or them to shew forth their commission authorising the said act or thing; (4) whereunto the plaintiff shall be admitted to reply, That the defendant did the fact supposed in the declaration, of his own wrong, without any such cause alledged by the said defendant; whereupon the issue in such action shall be

be joined to be tried by verdict of twelve men ; (5) and upon the trial of that issue, the whole matter to be given on both parties in evidence, according to the very truth of the same ; (6) and if verdict upon such issue shall pass for the defendant, the defendant to have his costs."

*Sett.* 17. " Provided always, and be it further enacted, That after any commission of bankrupts hereafter sued forth, and dealt in by the commissioners, the offender happen to die before the commissioners shall distribute the goods, lands and debts of the offenders, or any of them, by force of the aforesaid statute of the thirteenth year of the reign of our late sovereign lady queen *Elizabeth*, and this statute or either of them, That then nevertheless the said commissioners shall and may in that case proceed in execution, in and upon the said commission for and concerning the offenders goods, lands, tenements, hereditaments and debts, in such sort as they might have done if the party offender were living. 21 *Jac.* 1. c. 19."

**Stat.** 21 *Jac.* 1. c. 19. [*A. D.* 1623. intituled] " An act for the further description of a bankrupt, and relief of creditors against such as shall become bankrupts, and for inflicting corporal punishment upon the bankrupts in some special cases."

" Forasmuch as daily experience sheweth, that the number and multitude of bankrupts do increase more and more, and also the frauds and deceits invented and practised for the avoiding and deluding the penalties of the good laws in that behalf already made, and the remedy by them provided : (2) And for that divers defects are daily found in the former statutes made against bankrupts, both in a description of a bankrupt, as also in the power given to the commissioners for the discovery and distributing the bankrupt's estate, to the great encouragement of evil-minded persons, the hindrance of traffick and commerce, the great decay, overthrow, and undoing of many clothiers, by whom many thousands of the natural-born subjects of this realm, be from time to time in all parts of this kingdom set on work : All which do tend to the general hurt of this realm : (3) For remedy whereof, Be it enacted by the king's most excellent majesty, the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all and singular the aforesaid statutes and laws heretofore made against bankrupts, and for relief of creditors, shall be in all things largely and beneficially construed and expounded for the aid, help and relief of the creditors of such person or persons, as already be, or hereafter shall become bankrupt :"

*Sett.* 2. " And that all and every person or persons using, or that shall use the trade of merchandize, by way of bargaining, exchange, bartering, chevissance, or otherwise in gros, or by retail ; (2) or seeking his or her living by buying and selling ; (3) or that shall use the trade or profession of a Scrivener, receiving other mens monies or estates into his trust, or custody ; (4) who at any time after the end of this present sessions of parliament, shall either by himself, or others by his procurement, obtain

The commissioners shall proceed to execution, tho' the bankrupt die.

Laws made against bankrupts shall be beneficially construed for the creditors. 34 & 35 H. 8. c. 4. 13 El. c. 7. 1 Jac. 1. c. 15.

Who shall be deemed a bankrupt. March 34. In part repealed by 10 Annæ, c. 15. sect. 1.

2 Show. 513.

Skin. 270.

1 Salk. 109.

Mod. Cases in  
law 49.

any protection or protections, other than such person or persons as shall be lawfully protected by the privilege of parliament; (5) or shall prefer or exhibit unto his majesty, his heirs or successors, or unto any of the king's courts, any petition or petitions, bill or bills against his or her creditor or creditors, or any of them, thereby desiring or endeavouring to compel or enforce them, or any of them, to accept less than their just and principal debts, or to procure time, or longer days of payment, than was given at the time of their original contracts; (6) or being indebted to any person or persons in the sum of one hundred pounds or more, shall not pay, or otherwise compound for the same, within six months next after the same shall grow due, and the debtor be arrested for the same; (7) or within six months after an original writ sued out to recover the said debt, and notice thereof given unto him, or left in writing at his or their dwelling-house or last place of abode, or being arrested for debt, shall after his or her arrest lie in prison two months or more, upon that, or any other arrest or detention in prison for debt: (8) or being arrested for the sum of one hundred pounds or more, of just debt or debts, shall at any time after such arrest, escape out of prison, or procure his enlargement by putting in common or hired bail; (9) shall be accounted and adjudged a bankrupt to all intents and purposes: (10) And in the said cases of arrest, or lying in prison for such debt or debts, or getting forth by common or hired bail, from the time of his or her said first arrest."

Commissions,  
orders, &c.  
provided by  
13 El. c. 7. &  
1 Jac. 1. c.  
15. shall be  
pursued a-  
gainst him that  
is described to  
be a bankrupt  
by this act.

SECT. 3. "And be it further enacted by the authority of this present parliament, That the like commissions, orders, benefits and remedies which are and be provided and limited by the said former acts of parliament, made in the thirteenth year of the late queen *Elizabeth*, and in the first year of the reign of our sovereign lord the king's majesty, against any bankrupts, in them, or either of them described, or for, or concerning his, her, or their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares merchandize and debts, or any of them, shall and may be had, pursued, taken, and expounded against such person and persons as are herein and hereby declared, described, or expressed to be bankrupts, and against his, her and their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandize and debts, in such manner and form as the same ought, and might have been, if the persons herein declared, described, or expressed to be bankrupts, had been by the said statutes, or either of them, described to be bankrupts, to all intents and purposes whatsoever.

Orders, &c.  
provided by  
this act, shall  
be pursued a-  
gainst him  
that is descri-  
bed to be a  
bankrupt  
by 13 El. c.  
7. & 1 Jac. 1.  
c. 15.

SECT. 4. "And be it further enacted by the authority aforesaid, That the same orders, benefits and remedies, which are, and be provided and limited by this present act against any bankrupts, in or by this act declared, described or expressed to be bankrupts, or for, or concerning his, her or their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandizes, and debts, or any of them, or the discovery of them, or any of them, shall from henceforth be had, pursued, taken and expounded against such person and persons, as are declared or expressed

expressed to be bankrupts by the said former acts of parliament, or either of them, and against his, her, and their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandizes and debts, in such manner and form as the same ought and might have been, if the persons in the former statutes, or either of them, described to be bankrupts, had been mentioned and described to be bankrupts in and by this present act."

*Sec. 5.* " And whereas by the former laws, the commissioners appointed have power to examine the bankrupt himself, and such person or persons as are suspected to have, or detain any of the estate, goods or chattels of the bankrupts ; but some doubt hath been made, whether the commissioners have power to examine the wives of the bankrupts touching the same, by reason whereof the bankrupts wives do daily conceal and convey away, and cause to be conveyed away much part of their husbands monies, wares, goods, merchandize and other estate, to person or persons unknown to any but such wives, by reason whereof much of the bankrupt's estate is concealed, and detained from the creditors :"

*Sec. 6.* " For clearing therefore the said doubt, and avoiding the inconveniences aforesaid, Be it declared and enacted by the authority aforesaid, That after such time as any person shall by the said commissioners executing the said commission, or the greater part of them, be lawfully adjudged or declared to be a bankrupt, the said commissioners executing such commission, shall have power and authority to examine upon oath the wife and wives of all and every such bankrupt, for the finding out, and discovery of the estate and estates, goods and chattels of such bankrupt or bankrupts, concealed, kept or disposed of by such wife or wives, in their own persons, or by their own act or means, or by any other person or persons ; (2) and that she and they, the said wife and wives, shall incur such danger and penalty for not coming before the said commissioners, or for refusing to be sworn and examined, or for not disclosing the truth, upon her or their examination or examinations, as in and by the said former laws, or either of them, is already made and provided against any other person or persons in like cases."

The bankrupt's wife may be examined by the commissioners.

*Sec. 7.* " And be it further enacted by the authority aforesaid, That if any bankrupt shall upon his, or her examination or examinations, to be taken before the said commissioners, executing the said commission, be found fraudulently or deceitfully to have conveyed away his or her goods, chattels, lands, tenements, offices, fees, rents or annuities, or other estate, or any part thereof, to the value of twenty pounds or above, to the end and purpose to hinder the execution of this statute, or of any other the aforesaid statutes, or thereby to defraud, delay or hinder his or her creditors of the same, and shall not, upon his or her examination, discover unto the said commissioners, and (if it lie in his or her power) deliver unto the said commissioners all that estate, goods and chattels so fraudulently and deceitfully conveyed away, as aforesaid, or by him or her, his or her means, kept and detained from the said commissioners, or that cannot make it appear unto the said commissioners, that he or she hath sustained some casual

The bankrupt that fraudulently concealeth his goods, or rendreth not some just reason why he became bankrupt, shall be set upon the pillory, and lose one of his ears.

## Bankrupt.

loss, whereby he or she is disabled to pay what he or she then owed, shall or may be indicted for such fraud or abuse at the assizes or general sessions to be holden before the judges of assize, or justices of the peace of the county or place where he or she shall become bankrupt: (2) And if upon such indictment or indictments, the bankrupt be thereof convicted, he or she so convicted shall be set upon the pillory in some publick place, for the space of two hours, and have one of his or her ears nailed to the pillory and cut off."

The commissioners may break open the bankrupt's doors, &c.

*Seff. 8.* " And for that some doubt is conceived, whether the commissioners, in case of resistance, have power by the former laws to break open, or cause to be broken open, the house or houses of such bankrupts, which if they have not, the remedies by the former laws given will be to little effect: (2) Be it therefore enacted, that in execution of the said commission, it shall be lawful to and for the said commissioners, or the greater part of them, or any other person or persons, officer or officers, by them, or the greater part of them, to be deputed and appointed by their warrant or warrants under their hands and seals, to break open the house or houses, chambers, shops, ware-houses, doors, trunks or chests of the said bankrupt, where the said bankrupt, or any of his or her goods or estate, shall be, or reputed to be, and to seize upon, and order the body, goods, chattels, ready money, and other estate of such bankrupt, as by the said former laws are limited and appointed, whether it be by imprisonment of his or her body, or otherwise, as to the said commissioners, or the greater part of them, shall be thought meet.

The bankrupt's goods shall be ratably divided, notwithstanding any judgment, recognizance, &c.

*Seff. 9.* " And for the better division and distribution of the lands, tenements, hereditaments, goods, chattels, and other estate of such bankrupt, to and amongst his or her creditors; (2) Be it enacted, that the commissioners, or the greatest part of them, shall and may examine upon oath, or by any other ways or means as to them shall seem meet, any person or persons, for the finding out, and discovery of the truth and certainty of the several debts due, and owing to all such creditor and creditors as shall seek relief by such course of commission to be issued forth, as aforesaid: (3) and that all and every creditor and creditors having security for his or their several debts, by judgment, statute, recognizance, specialty with penalty or without penalty, or other security, or having no security, or having made attachments in *London*, or any other place, by virtue of any custom there used, of the goods and chattels of any such bankrupt, whereof there is no execution or extent served and executed upon any the lands, tenements, hereditaments, goods, chattels, and other estate of such bankrupt, before such time as he or she shall or do become bankrupt, shall not be relieved upon any such judgment, statute, recognizance, specialty, attachments, or other security, for any more than a ratable part of their just and due debts, with the other creditors of the said bankrupt, without respect to any such penalty or greater sum contained in any such judgment, statute, recognizance, specialty, with penalty, attachment, or other security.

The commissioners may

*Seff. 10.* " And be it further enacted, That if it shall happen, any the lands, tenements, goods, chattels, debts, or other estate of any bankrupt,

to

to be extended, after such time as he or she is become a bankrupt, by any person or persons, under colour or pretence of his or their being an accountant, or any way indebted unto our sovereign lord the king's majesty, his heirs or successors, that then it shall be lawful to and for the said commissioners, to examine upon oath, whether the said debt were due to such debtor or accountant, upon any bargain or contract originally made betwixt such accountant and the said bankrupt, the said debtor and accountant, and his or their servants: (2) and if such bargain or contract was originally made, to and with any other person or persons than the said debtor or accountant, or for the use and trust of any other person or persons, then it shall and may be lawful to and for the said commissioners, or the greater part of them, to order and dispose of all such lands, tenements, hereditaments, goods, chattels, and debts so extended as aforesaid, to and for the use of the creditors which shall seek relief by the said commission; (3) and that the order and disposition of the said commissioners, or the greater part of them, shall be good and available against the said extent, and against all persons claiming from, by or under the said extent: (4) And that such person and persons, to whom the said lands, tenements, goods and chattels so extended shall be bargained, sold, granted or assigned by the commissioners aforesaid, or the greater part of them, shall have good remedy to have, demand and recover the same, and against such person and persons who shall detain the same: (5) and for that it often falls out, that many persons, before they become bankrupts, do convey their goods to other men upon good consideration, yet still do keep the same, and are reputed the owners thereof, and dispose the same as their own:

*Stat. 11.* "Be it enacted, that if at any time hereafter, any person or persons shall become bankrupt, and at such time as they shall become bankrupt, shall by the consent and permission of the true owner and proprietary, have in their possession, order and disposition, any goods or chattels, whereof they shall be reputed owners, and take upon them the sale, alteration or disposition as owners, That in every such case, the said commissioners, or the greater part of them, shall have power to sell and dispose the same, to and for the benefit of the creditors which shall seek relief by the said commission, as fully as any other part of the estate of the bankrupt: (2) And for the better payment of debts, and discouraging men to become bankrupts:

*Stat. 12.* "Be it further enacted, That the said commissioners, or the greater number of them, shall have power by virtue of this act, by deed indented and inrolled, within six months after the making thereof, in some of his majesty's courts of record at *Westmin'er*, to grant, bargain, sell and convey any manors, lands, tenements or hereditaments, whereof any bankrupt is or shall be in any ways seised of an estate in tail, in possession, reversion or remainder, and whereof no reversion or remainder is, or shall be in the king's majesty, his heirs or successors, of the gift or provision of his majesty, his progenitors, his heirs or successors, to any person or persons, for the relief and benefit of the creditors of all such bankrupts; (2) and that all and every such grants, bargains, sales and conveyances shall

be

proceed when the bankrupt by fraud makes himself accountant to the king.

Goods in the Possession, &c. of the bankrupt, are liable to pay his debts, notwithstanding any former grants, &c.

A grant of the intailed lands of the bankrupt shall be good.



be good and available in the law to such person or persons and their heirs, against the said bankrupts, and against all and every the issues of the body of such bankrupts, and against all and every person and persons claiming any estate, right, title or interest, by, from or under the said bankrupts, after such time as such person shall become bankrupt, and against all and every other person and persons whatsoever, whom the said bankrupt by common recovery, or other ways or means might cut off, or debar from any remainder, reversion, rent, profit, title or possibility, into or out of any the said manors, lands, tenements or hereditaments.

Conditional estates granted by the bankrupt, may be redeemed by the commissioners.

*Señ. 13.* “ And be it further enacted, that if any person that now is, or hereafter shall become a bankrupt, have heretofore granted, conveyed or assured, or shall at any time hereafter, grant, convey or assure any lands, tenements, hereditaments, goods, chattels, or other estate, unto any person or persons, upon condition, or power of redemption at a day to come, by payment of money, or otherwise, That it shall and may be lawful to and for the said commissioners, or the greater part of them, before the time of the performance of such condition, to assign and appoint under their hand and seals, such person or persons as they shall think fit, to make tender or payment of money, or other performance, according to the nature of such condition, as fully as the bankrupt might have done; (2) and that the said commissioners, or the greater part of them, shall after such tender, payment or performance, have power to sell and dispose of such lands, tenements, hereditaments, goods and chattels and other estates so granted, conveyed or assured upon condition, to and for the benefit of the creditors, as fully as they may sell or dispose of any the estate of the bankrupt.

The commission shall be sued forth within five years.

*Señ. 14.* “ Provided further, that no purchaser, for good and valuable consideration, shall be impeached by virtue of this act, or any other act heretofore made against bankrupts, unless the commission to prove him or her a bankrupt, be sued forth against such bankrupt within five years after he or she shall become a bankrupt.”

Strangers shall take advantage of this, and all other laws against bankrupts.

*Señ. 15.* “ Provided further, and be it enacted by the authority aforesaid, That this act, and all other acts of parliament heretofore made against bankrupts, shall extend to strangers born, as well aliens as denizens, as effectually as to the natural-born subjects, both to make them subject to the laws as bankrupts, as also to make them capable of the benefit or contribution, as creditors by those laws. 13 & 14 Car. 2. cap. 24.

14 Car. 2. c. 24.

**Stat.** 14 Car. 2. c. 24. [*A. D.* 1662. intituled] “ An act declaratory concerning bankrupts.”

Whereas divers noblemen, gentlemen, and persons of quality, no way, bred up to trade or merchandize, do oftentimes put in great stocks of money into the *East-India* company, or *Guiney* company, and the fishing trade and such other publick societies, and receive the procede of those stocks sometimes in ready monies, sometimes in commodities, which they usually sell for money, or exchange again, by which means the trade of those companies

panies is much encouraged, fishing and navigation increased, and the publick good of those companies is much advanced.

Notwithstanding which great advantage to the publick, there hath been lately some opinion conceived that such persons may, and ought to be made subject to the statutes provided against bankrupts :

For the better declaring and explaining the law therein, and to the end such persons may not be discouraged in those honourable endeavours for promoting publick undertakings : Be it declared and enacted by the king's most excellent majesty, with the advice and assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That no person or persons whatsoever, who have adventured or put in, or who hereafter shall adventure or put in any sum or sums of money, in the said *East India* company, or *Guiney* company, or into any joint stock or stocks of money by them made, or raised, or to be made and raised, for and towards the maintaining and carrying on the trade by the said *East India* company, or *Guiney* company, managed, or to be managed, or who have formerly, or shall hereafter adventure or put in any sum or sums of money into any stock or stocks of money, for the managing and carrying on of the said fishing trade, or the trade now called the Royal fishing trade, and shall receive and take his or their part, or dividend of fish, goods or merchandizes in *specie*, and shall sell, or exchange the same, shall for or by reason only of such adventure of moneys so put into the *East-India* company, or *Guiney* company, or into any stock or stocks, for and towards the said fishing trade, or for, or by reason only of the receiving and taking such fish, goods, and merchandizes in *specie*, or selling for money, or exchanging the same again, be adjudged, taken, esteemed or reputed a merchant or trader within any statute or statutes for bankrupts, or be liable to the same.

Provided always, and it is hereby declared, That every person or persons, who shall trade, traffick or merchannize in any other way or manner, than in the said Royal fishing trade, or the trade managed by the said *East-India* company, or the *Guiney* company as aforesaid, shall for and by reason of his and their trading, trafficking, and merchandizing, be liable to commission and commissions against bankrupts, as fully to all intents and purposes, and not otherwise, as if this act had never been made ; any thing in this act to the contrary notwithstanding.

And be it further enacted, That a verdict and judgment in replevin heretofore had or given in the term of *Easter* in the year one thousand six hundred fifty-three, in the *Kings Bench*, betwixt *Phineas Andrews* plaintiff, *Richard Woolward*, and *William Meggs* defendants, whereby Sir *John Wolstenholme* knight, an adventurer in the said *East-India* company, was adjudged and found liable to a commission of bankrupts only for and by reason of a share he had in the joint-stock of the said company, and a pretended selling for money part of the return, which he had in *specie* for his said adventure, shall be, and is hereby declared contrary to law, and is hereby reversed, and made void and null.

Pro-

Proviso for  
purchasers in  
the case of  
Sir John Wol-  
stenholme.

Provided always, and be it enacted, That no act, sale or disposition of any of the lands, tenements, hereditaments, goods, chattels, debts or credits of the said Sir *John Wolstenholme*, or any distribution of the same, or of any money, heretofore made or done by the commissioners of bankrupts, or any claiming under them, or any of them, by virtue or colour of any commission or commissions taken out against the said Sir *John Wolstenholme*; and whereof any person or persons is by virtue or colour of, or under any such act, sale or disposition, actually seized or possessed, shall be hereby impeached, or frustrated, but that the same be enjoyed for and toward satisfaction of the debts, for which the same have been disposed or distributed.

By Stat. Ann. c. 7. 13. [*A. D.* 1708. intituled, “An act for preserving the privileges of ambassadors.”] sect. 5. “It is provided, that no merchant or other trader whatsoever, within the description of any of the statutes against bankrupts, who hath or shall put himself into the service of any such ambassador or publick minister, shall have or take any manner of benefit by that act.”

10 An. c. 15. Stat. 10 Ann. c. 15. [*A. D.* 1711. intituled] “An act for repealing a clause in the statute made in the twenty-first year of the reign of king *James* the first, [intituled, *An act for the further description of a bankrupt, and relief of creditors, against such as shall become bankrupts, and for inflicting corporal punishment upon the bankrupts, in some special cases,*] which makes descriptions of bankrupts; and for the explanation of the laws relating to bankruptcy, in case of partnership.”

21 Ja. 1.  
c. 19.

“Whereas by an act made in the one and twentieth year of the reign of king *James* the first, [intituled, *An act for the further description of a bankrupt, and relief of creditors against such as shall become bankrupts, and for inflicting corporal punishment upon the bankrupts, in some special cases;*] it is, (amongst other things) enacted, That all and every person or persons using, or that should use the trade of merchandize, by way of bargaining, exchange, bartering, chevifance, or otherwise, in gros or by retail, or seeking his or her living by buying and selling, or that should use the trade or profession of a scrivener, receiving other mens monies or estates into his trust or custody, who, at any time after the end of the said session of parliament, being indebted to any person or persons in the sum of one hundred pounds or more, should not pay or otherwise compound for the same within six months next after the same should grow due, and the debtor be arrested for the same, or within six months after an original writ sued out to recover the said debt, and notice thereof given unto him, or left in writing at his or their dwelling-house or last place of abode, or being arrested for the sum of one hundred pounds or more of just debt or debts, should, at any time after such arrest, procure his enlargement by putting in common or hired bail, should be accounted and adjudged a bankrupt to all intents and purposes, and in the said cases of arrest, or getting forth by common or hired bail, from the time of his or her said first arrest: And whereas it is found by experience, that many and great mischiefs and inconveniencies have happened, especially of late, to trade

and

and credit in general, by reason of the said descriptions of a bankrupt :  
 For remedy thereof for the future ; Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, That the said act, and also all and every other act and acts of parliament whatsoever, so far forth as they relate to the said descriptions of a bankrupt, be, from and after the twentieth day of April in the year of our Lord one thousand seven hundred and twelve, repealed and made void ; and that no person or persons whatsoever, within the said descriptions, or any of them, shall, from and after the said twentieth day of April, for or by reason of the same, be taken or adjudged to be within the statute or statutes of bankrupt whatsoever.

*Sec. 2.* " Provided nevertheless, and be it enacted by the authority afore-  
 said, That no act, sale or disposition of any the estate of such persons within the said description, or any distribution of the same, by or under any commission or commissions of bankruptcy, before the said twentieth day of April, taken out against such person or persons, shall be hereby impeached or frustrated, but that the same shall be enjoyed for and towards satisfaction of the debts for which the same have been disposed or distributed.

*Sec. 3.* " And whereas a doubt has arisen upon an act made in the fourth year of her majesty's reign, [intituled, *An act to prevent frauds frequently committed by bankrupts,*] whether the discharge of a bankrupt, by virtue of that act, should be construed to discharge the partners of such bankrupt from the same debt ; Be it therefore further enacted and declared by the authority afore-  
 said, That by the discharge of any bankrupt or bankrupts, by force of the said act or any other acts relating to bankrupts, from the debts by him, her, or them due and owing at the time that he, she, or they did become a bankrupt, shall not be construed, nor was meant or intended to release or discharge any other person or persons who was or were partner or partners with the said bankrupt in trade, at the time he, she, or they became a bankrupt, or then stood jointly bound, or had made any joint contract together with such bankrupt or bankrupts, for the same debt or debts from which he was discharged, as afore-  
 said, but that notwithstanding such discharge, such partner and partners, joint obligor and obligors, and joint contractors with such bankrupt and bankrupts, as afore-  
 said, shall be and stand chargeable with, and liable to pay such debt and debts, and to perform such contracts, as if the said bankrupt and bankrupts had never been discharged from the same."

*Stat. 7 Geo. 1. c. 31.* [*A D. 1720. intituled*] " An act for explaining and making more effectual the several acts concerning bankrupts."

" Whereas merchants, and other traders in goods, have been often obliged, and more especially of late years, to sell and dispose of their goods and merchandizes to such persons as have occasion for the same,

Persons taking  
bills, bonds,  
&c. payable at  
a future day  
for goods de-  
livered to such  
as after be-  
come bank-  
rupt, shall be  
admitted to  
prove their  
bills, &c. and  
be entitled to  
a proportion-  
able part of  
the bankrupt's  
estate,

discounting  
such securities  
after the rate  
of 5 *l. per cent.*  
for what they  
receive.

Bankrupts  
shall be dis-  
charged of  
such securi-  
ties.

No such cre-  
ditor shall join  
in suing forth  
a commission,  
till such debt  
become due.

upon trust or credit, and to take bills, bonds, promissory notes, or other persons securities for their monies, payable at the end of three, four, or six months, or other future days of payment, and the buyers of such goods becoming bankrupts, and commissions of bankruptcy being taken out against them before the money upon such bonds, notes, or other securities became payable, it hath been a question whether such persons, giving such credit on such securities, should be let in to prove their debts, or be admitted to have any dividend, or other benefit by the commission, before such time as such securities became payable; which hath been a great discourage-  
ment to trade, and great prejudice to credit within this realm: For remedy whereof Be it enacted and declared by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by authority of the same, That all and every person and persons, who have given credit, or at any time or times hereafter shall give credit on such securities, as aforesaid, to any person or persons who is, are, or shall become bankrupts, upon a good and valuable consideration *bona fide*, for any sum or sums of money, or other matter or thing whatsoever, which is or shall not be due or payable at or before the time of such person's becoming bankrupt, shall be admitted to prove his, her, and their several and respective bills, bonds, notes, or other securities, promise, or agreements for the same, in like manner as if they were made payable presently, and not at a future day; and shall be entitled unto, and shall have and receive a proportionable part, share, and dividend of such bankrupt's estate in proportion to the other creditors of such bankrupts, deducting only thereout a rebate of interest, and discounting such securities payable at future times, after the rate of five pounds *per centum per annum* for what he shall so receive, to be computed from the actual payment thereof to the time of such debt, duty, or sum of money should or would have become due and payable in and by such securities, as aforesaid.

*Sett.* 2. "And be it further enacted by the authority aforesaid, That all and every person or persons, who now are or shall become bankrupts, shall be discharged of and from all and every such bond, note, or other security, as aforesaid, and shall have the benefit of the several statutes now in force against bankrupts, in like manner, to all intents and purposes, as if such sum of money had been due and payable before the time of his becoming a bankrupt.

*Sett.* 3. "Provided always, and it is hereby declared, That no such creditor shall be deemed or taken to be a sufficient creditor, for or in respect of such debt, to petition or join in any petition for the obtaining or suing forth any commission of bankruptcy, until such time as such debt shall become actually due and payable." *This last section is repealed by 5 Geo. 2. c. 30. f. 22.*

Stat. 5 Geo. 2. c. 30. [A. D. 1732. intituled] "An act to prevent the committing of frauds by bankrupts." 5 Geo. 2. c. 30.

"Whereas commissions of bankrupt have been issued against several persons not long before and since the expiration of the statute made in the fifth year of his late majesty's reign, intituled, *An act for the better preventing frauds committed by bankrupts*, and such persons have been declared bankrupts by the commissioners by such commissions authorized, and yet several of such bankrupts, by reason of the expiration of the said statute, have not only refused to surrender themselves to the commissioners, and to discover and deliver up their estate and effects to the said commissioners for the benefit of their creditors, but have carried away and concealed the same in such manner, that the said commissioners have not been able to seize the same, to the manifest wrong and injury of their creditors, and to the great discouragement of trade: And whereas many evil minded persons have, since the expiration of the said statute, bought and taken upon trust and credit divers great quantities of goods, wares, and merchandizes, and have thereby, and by their extravagant manner of living and otherwise contracted great debts, and having gotten such goods and effects into their custody, have sold or pawned the same for less than the value thereof, and thereby raised ready money, and have withdrawn themselves from their usual places of abode, with their effects, into secret places, in order to oblige their creditors to accept of such composition for their respective debts, as such evil minded persons think fit to offer, or have carried away their effects beyond the seas, whereby their creditors have been totally deprived of their debts: And whereas many persons have and do daily become bankrupts, not so much by reason of losses and unavoidable misfortunes, as to the intent to oblige their creditors to accept such their unjust proffers and composition, and to defraud and hinder their creditors of their just debts: Therefore to remedy the said abuses, and to supply the defects and inconveniencies of former laws relating to bankrupts, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, That if any person or persons, who since the fourteenth day of May, which was in the year of our Lord one thousand seven hundred and twenty-nine, hath or have become bankrupt, or who shall at any time hereafter during the continuance of this act become bankrupt, within the intent and meaning of the several statutes made and now in force concerning bankrupts, or any of them, and against whom a commission of bankrupt under the great seal of Great Britain hath, since the said fourteenth day of May, which was in the year of our Lord one thousand seven hundred and twenty-nine, been awarded and issued out, or shall at any time hereafter be awarded and issued out; whereupon the person or persons, against whom such commission hath issued or shall issue, hath or have been or shall be declared bankrupt or bankrupts, shall not within forty-two days after notice thereof in writing, to be left at the usual place of abode of such person or persons, or personal notice, in case such person or persons be then in prison,

5 Geo. 1. c. 24.

Bankrupts since 14 May 1729.

not surrendering within 42 days notice.

conforming to  
the statutes,

or embezzling  
goods to the  
value of 20l.  
guilty of fe-  
lony.

Goods of  
bankrupts  
condemned to  
go to the cre-  
ditors.

and notice given in the *London Gazette*, that such commission or commissions is, are, or have been issued, and of the time and place of a meeting of the commissioners therein named, or the major part of them, surrender him, her, or themselves to the said commissioners named in the said commission, or the major part of them, and sign or subscribe such surrender, and submit to be examined from time to time upon oath, or, being of the people called *Quakers*, upon the solemn affirmation by law appointed for such people, by and before such commissioners, or the major part of them, by such commission authorized, and in all things conform to the several statutes already made and now in force concerning bankrupts; and also upon such his, her, or their examination fully and truly disclose and discover all his, her, or their effects and estate real and personal, and how and in what manner, to whom, and upon what consideration, and at what time or times he, she, or they have or hath disposed of, assigned, or transferred any of his, her, or their goods, wares, merchandizes, monies, or other estate and effects (and all books, papers, and writings relating thereunto) of which he, she, or they was or were possessed, or in or to which he, she, or they was or were any ways interested or intitled, or which any person or persons had, or hath, or have had in trust for him, her, or them, or for his, her, or their use, at any time before or after the issuing of the said commission, or whereby such person or persons, or his, her, or their family or families, hath, or have, or may have or expect any profit, possibility of profit, benefit, or advantage whatsoever, except only such part of his, her, or their estate and effects, as shall have been really and *bona fide* before sold or disposed of in the way of his, her, or their trade and dealings; and except such sums of money, as shall have been laid out in the ordinary expence of his, her, or their family or families; and also, upon such examination, deliver up unto the said commissioners by the said commission authorized, or the major part of them, all such part of his, her, or their the said bankrupts goods, wares, merchandizes, money, estate, and effects, and all books, papers, and writings relating thereunto, as at the time of such examination shall be in his, her, or their possession, custody, or power (his, her, or their necessary wearing apparel, and the necessary wearing apparel of the wife and children of such bankrupt only excepted); then he, she, or they the said bankrupt or bankrupts, in case of any default and wilful omission in not surrendering and submitting to be examined as aforesaid, or in case he, she, or they shall remove, conceal, or embezel any part of such his, her, or their estate, real or personal, to the value of twenty pounds, or any books of account, papers, or writings relating thereto, with an intent to defraud his, her, or their creditors (and being thereof lawfully convicted by judgment or information) shall be deemed and adjudged to be guilty of felony, and shall suffer as felons without benefit of clergy, or the benefit of any statute made in relation to felons; and in such cases such felon's goods and estate shall go and be divided among the creditors seeking relief under such commission, any law; usage, or custom to the contrary thereof in any wise notwithstanding.

Set.

*Seet. 2.* “ Provided always, and be it enacted by the authority afore-  
said, That the said commissioners, authorized as aforesaid, shall appoint  
within the said forty-two days (so appointed, as aforesaid) for the bank-  
rupt to surrender and conform, as aforesaid, not less than three several  
meetings, for the purposes aforesaid, the last of which shall be on the  
forty-second day hereby limited for such bankrupt's appearance; except  
on commissions already issued since the said fourteenth day of *May* one  
thousand seven hundred and twenty-nine, where the person or persons  
against whom such commission issued has or have before surrendered and  
submitted to be examined: In which case the said commissioners, autho-  
rized as aforesaid, shall appoint only one sitting more for the pur-  
poses aforesaid, unless the assignee or assignees of the estate of such bank-  
rupt shall think more sittings necessary, and desire the same, and three  
weeks notice at least shall be given in the *London Gazette* of the time and  
place of such meetings.

*Seet. 3.* “ Provided always, and it is hereby declared and enacted by  
the authority aforesaid, That it shall and may be lawful to and for the  
lord chancellor, or lord keeper, or commissioners for the custody of the  
great seal of *Great Britain* for the time being, to enlarge the time for  
such person or persons surrendering him, her, or themselves, and dis-  
closing and discovering his, her, or their estate and effects, as aforesaid,  
as the said lord chancellor, lord keeper, or such commissioners shall think  
fit, not exceeding fifty days, to be computed from the end of the said  
forty-two days, so as such order for enlarging the time be made by the  
said lord chancellor, lord keeper, or such commissioners, six days at least  
before the time, on which such person or persons was or were so to sur-  
render him, her, or themselves, and make such discovery, as aforesaid.

*Seet. 4.* “ And be it further enacted by the authority aforesaid, That  
every such bankrupt or bankrupts, as aforesaid, after any assignee or  
assignees of his, her, or their estate and effects shall be chosen and ap-  
pointed, as herein after mentioned, shall be, and is, and are hereby re-  
quired forthwith to deliver up upon oath, or (one of the people called  
*Quakers*) upon solemn affirmation before one of the masters of the high  
court of *Chancery*, or before any justice of the peace within his respective  
jurisdiction, which oath or affirmation they are hereby empowered to ad-  
minister, unto such assignee or assignees, all his, her, or their books of  
accounts, papers, and writings not seized by the messenger of the said  
commission, or not before delivered up to the commissioners, or the ma-  
jor part of them, and then in his, her, or their custody or power, and dis-  
cover such as are in the custody or power of any other person or persons, that  
any ways relate to, or concern his, her, or their estate or effects; and all  
and every such bankrupt or bankrupts, not in prison or custody, shall at  
all times after such surrender, as aforesaid, be at liberty, and is and are  
hereby required to attend such assignee or assignees, upon every reason-  
able notice in writing for that purpose given by such assignee or assignees  
unto such bankrupt or bankrupts, or left for him, her, or them, at his,  
her, or their house, or place of abode, in order to assist, and shall assist  
such

Number and  
limitation of  
sittings.

Lord chan-  
cellor may  
enlarge the  
time for sur-  
rendering.

Books of ac-  
count to be  
delivered to  
the assignees  
on oath.

Bankrupt to  
attend as-  
signees,



such assignee or assignees, in making out the accounts of the said bankrupt's estate and effects.

*Seet. 5.* " And be it further enacted by the authority aforesaid, That all and every bankrupt or bankrupts, having surrendered as aforesaid, shall, at all reasonable times, before the expiration of the said forty-two days, or such further time as shall be allowed to such bankrupts to finish his, her, or their examination, be at liberty to inspect his, her, or their books, papers, and writings, in the presence of such assignee or assignees, or some person to be appointed by such assignee or assignees for that purpose, and to take and bring with him, her, or them, for his, her, or their assistance, such persons as he, she, or they shall think fit, not exceeding two persons at any one time, and to make out such extracts and copies from thence, as he, she, or they shall think fit, the better to enable him, her, and them, to make a full and true discovery and disclosure of his, her, or their estate and effects; and in order thereto the said bankrupt or bankrupts shall be free from all arrests, restraint, or imprisonment of any of his, her, or their creditors in coming to surrender, and from the actual surrender of such bankrupt to the said commissioners, for and during the said forty-two days, or such further time, as shall be allowed to such bankrupt or bankrupts, for finishing his, her, or their examinations as aforesaid, provided such bankrupt was not in custody at the time of such surrender and submission to be examined; and in case such bankrupt shall be arrested for debt, or on any escape warrant, coming to surrender him or herself to the said commissioners, or, after his or her surrender, shall be so arrested within the time before mentioned, that then, on producing such summons or notice, under the hands of the said commissioners, assignee or assignees, to the officer who shall arrest him, her, or them, and making it appear to such officer, that such notice or summons is signed by the said commissioners, or the major part of them, or such assignee or assignees, and giving such officer a copy thereof, shall be immediately discharged. And in case any officer shall detain such bankrupt or bankrupts (after he, she, or they shall have shewn such notice or summons to him, and made it appear it was signed as aforesaid) in his custody, such officer shall forfeit and pay to such bankrupt, for his own use, the sum of five pounds for every day such officer shall detain such bankrupt, to be recovered by action of debt, in any of his majesty's courts of record at *Westminster*, in the name or names of such bankrupt or bankrupts, with full costs of suit.

*Seet. 6.* " Provided always, and be it further enacted, That in case any bankrupt be in prison, or in custody, at the time of issuing of the said commission, as aforesaid, and is willing to surrender and submit to be examined according to the directions of this act, and can be brought before the said commissioners and creditors for that purpose, the expence thereof shall be paid out of the said bankrupt's estate and effects: But in case such bankrupt is in execution, or cannot be brought before the commissioners, that then the acting commissioners shall from time to time attend the said bankrupt in prison or custody, and take his or her discovery, as in other cases:

inspect ac-  
counts,

and be free  
from restraint  
during exami-  
nation, if not  
in custody be-  
fore.

Penalty on of-  
ficer detaining  
bankrupts  
from attend-  
ing assignees.

Bankrupts in  
custody to be  
brought be-  
fore commis-  
sioners at the  
creditors ex-  
pence ;  
if in execu-  
tion, commis-  
sioners to at-  
tend them in  
prison.

cases; and the assignees of the said estate shall have power, and are hereby required to appoint one or more persons to attend such bankrupt being in prison or in custody, as aforesaid, from time to time, and to produce to him or her, his or her books, papers, and writings, in order to prepare his or her last discovery and examination, according to the directions before mentioned; a copy whereof the assignees of the said estate shall apply for, and the said bankrupt shall deliver to them or their order, ten days at least before such last examination.

*Sec. 7.* " And be it further enacted by the authority aforesaid, That all and every person and persons so become or to become bankrupts, as aforesaid, who shall within the time limited by this act surrender him, her, or themselves to the acting commissioners named and authorized in or by any commission of bankrupt awarded or to be awarded against him, her, or them, and in all things conform, as in and by this act is directed, shall be allowed the sum of five pounds *per centum* out of the neat produce of all the estate that shall be recovered in and received; which shall be paid unto him, her, or them, by the assignee or assignees, of the said commissioners, in case the neat produce of the said estate, after such allowance made, shall be sufficient to pay the creditors of the said bankrupt, who have proved their debts under the said commission, the sum of ten shillings in the pound, and so as the said five pounds *per centum* shall not amount in the whole to above the sum of two hundred pounds. And in case the neat produce of the said estate shall, over and above the allowance hereafter mentioned, be sufficient to pay the said creditors the sum of twelve shillings and six pence in the pound for their respective debts, that then all and every person or persons, so conforming, shall be allowed the sum of seven pounds ten shillings *per centum* out of such neat produce, to be paid by the assignee or assignees, so as such seven pounds ten shillings *per centum* shall not amount in the whole to above the sum of two hundred and fifty pounds. And in case the neat produce of the said estate shall, over and above the allowance hereafter made, be sufficient to pay the said creditors the sum of fifteen shillings in the pound for their respective debts, that then all and every such person and persons, so conforming, shall be allowed the sum of ten pounds *per centum* out of such neat produce, to be paid by the assignee, or assignees, so as such ten pounds *per centum* shall not amount in the whole to above the sum of three hundred pounds; and every such bankrupt shall be discharged from all debts by him, her, or them due or owing at the time, that he, she, or they did become bankrupt. And in case any such bankrupt shall afterwards be arrested, prosecuted, or impleaded for any debt due before such time as he, she, or they became bankrupt, such bankrupt shall be discharged upon common bail, and shall and may plead in general, that the cause of such action or suit did accrue before such time as he, she, or they became bankrupts, and may give this act and the special matter *in evidence*; and the certificate of such bankrupt's conforming, and the allowance thereof according to the directions of this act, shall be and shall be allowed to be sufficient evidence of the trading, bankruptcy, commission, and other proceedings precedent to the obtaining such certificate

Allowance to bankrupts.

Bankrupts discharged freed from future arrests.

cate, and a verdict shall thereupon pass for the defendant, unless the plaintiff in such action can prove the said certificate was obtained unfairly and by fraud, or unless the plaintiff in such action can make appear any concealment by such bankrupt to the value of ten pounds; and if a verdict pass for the defendant, or the plaintiff shall become nonsuited, or judgment be given against the plaintiff, the defendant shall recover his full costs.

Bankrupts allowance if the effects amount not to 10s. per. pound.

*Seet. 8.* " Provided always, and it is hereby declared and enacted by the authority aforesaid, That if the neat proceed of such bankrupt's estate so to be discovered, recovered, and received, together with what shall be otherwise recovered and received, shall not amount to so much as will pay all and every the creditors of such bankrupt, who shall have proved their debts under the said commission, the sum of ten shillings in the pound for their respective debts, after all charges first had and deducted, that then and in such case such bankrupt shall not be allowed the sum of five pounds *per centum* out of such estate, as shall be so recovered in; but shall be allowed and paid by the assignees so much money, as the said assignees and commissioners authorized, as aforesaid, shall think fit to allow to such bankrupt not exceeding three pounds *per centum*.

In what cases future effects of bankrupts still liable to creditors.

*Seet. 9.* " Provided always, and be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of *June* one thousand seven hundred and thirty-two, in case any commission of bankruptcy shall issue against any person or persons, who, after the said twenty-fourth day of *June* one thousand seven hundred and thirty-two, shall have been discharged by virtue of this act, or shall have compounded with his, her, or their creditors, or delivered to them his, her, or their estate or effects, and been released by them, or been discharged by any act for the relief of insolvent debtors after the time aforesaid, that then and in either of those cases the body and bodies only of such person and persons conforming as aforesaid, shall be free from arrest and imprisonment by virtue of this act; but the future estate and effects of every such person and persons shall remain liable to his, her, or their creditors, as before the making of this act (the tools of trade, the necessary household goods and furniture, and necessary wearing apparel of such bankrupt, and his wife, and children only excepted) unless the estate of such person or persons, against whom such commission shall be awarded, shall produce clear, after all charges, sufficient to pay every creditor under the said commission, fifteen shillings in the pound for their respective debts.

On what conditions certificates to be signed.

*Seet. 10.* " Provided also, and be it enacted by the authority aforesaid, That no discovery upon oath, or solemn affirmation, to be made by any bankrupt or bankrupts of his, her, or their estate and effects, pursuant to this act, shall intitle such bankrupt or bankrupts to the benefits allowed by this act, unless the commissioners authorized by such commission, or the major part of them, shall in writing under their hands and seals certify to the lord chancellor, or lord keeper, or commissioners for the custody of the great seal of *Great Britain* for the time being, that such bankrupt or bankrupts hath or have made a full discovery of his, her, or their estate and effects, and in all things conformed himself, herself, or themselves, according

to the directions of this act; and that there doth not appear to them any reason to doubt of the truth of such discovery, or that the same is not a full discovery of all such bankrupt's estate and effects; and unless four parts in five in number and value of the creditors of such bankrupt or bankrupts, who shall be creditors for not less than twenty pounds respectively, and who shall have duly proved their debts under such commission, or some other person by them respectively duly authorized thereunto, shall sign such certificate, and testify their consent to such allowance and certificate, and to the said bankrupt's discharge in pursuance of this act, to be also certified by such commissioners; but the said commissioners shall not certify the same till they shall have proof by affidavit or affirmation in writing of such creditors, or of the person by them respectively authorized for that purpose, signing the said certificate, and of the power and authority, by which any person shall be authorized by any creditor to assign such certificate for any creditor; which affidavit or affirmation, together with such warrant or authority to sign, shall be laid before the lord high chancellor, lord keeper, or commissioners of the great seal, with the said certificate, in order for the allowing and confirming the same: and unless such bankrupt make oath, or being of the people called *Quakers*, solemnly affirm in writing, that such certificate and consent of the creditors thereunto were obtained fairly, and without fraud; and unless such certificate shall, after such oath or affirmation of the bankrupt, be allowed and confirmed by the lord chancellor, lord keeper, or commissioners for the custody of the great seal of *Great Britain* for the time being, or by such two of the justices of the *courts of King's Bench, Common Pleas*, or barons of the court of *Exchequer at Westminster*, to whom the consideration of such certificate shall be referred by the lord chancellor, lord keeper, or commissioners of the great seal for the time being; and any of the creditors of such bankrupt are to be allowed to be heard, if they shall think fit, before the respective persons aforesaid, against the making such certificate, and against the confirmation thereof; nor shall any commissioner sign such certificate till after four parts in five in number and value of the said creditors shall have signed the same, as aforesaid.

*Seet. 11.* " And be it enacted by the authority aforesaid, That every bond, bill, note, contract, agreement, or other security whatsoever, to be made or given by any bankrupt, or by any other person, unto or to the use of or in trust for any creditor or creditors, or for the security of the payment of any debt or sum of money due from such bankrupt at the time of his becoming bankrupt, or any part thereof, between the time of his becoming bankrupt, and such bankrupt's discharge, as a consideration, or to the intent to persuade him, her or them, to consent to, or sign any such allowance or certificate, shall be wholly void and of no effect; and the moneys thereby secured or agreed to be paid, shall not be recovered or recoverable; and the party sued on such bond, bill, note, contract or agreement, shall and may plead the general issue, and give this act and the special matter in evidence; any thing therein contained, or any law, custom, or usage, to the contrary notwithstanding.

Contracts to induce creditors to sign certificates, void.

Persons ex-  
cepted from  
the benefits of  
this act.

*Seet. 12.* " Provided always, and be it enacted by the authority aforesaid, That nothing in this act shall be construed to extend, or give, or grant any privilege, benefit or advantage, to any bankrupt whatsoever, against whom a commission of bankrupt under the great seal of *Great Britain*, since the said fourteenth day of *May*, which was in the year of our lord one thousand seven hundred and twenty nine, hath issued, or hereafter shall issue, who hath, or shall, for or upon marriage of any of his or her children, have given, advanced, or paid above the value of one hundred pounds, unless he or she shall prove, or by his or her books fairly kept, or otherwise upon his or her oath, or being of the people called *Quakers*, upon solemn affirmation before the major part of the commissioners in such commission named and authorized, that he or she had, at the time thereof, over and above the value so given, advanced, or paid, remaining in goods, wares, debts, ready money, or other estate real or personal, sufficient to pay and satisfy unto each and every person, to whom he or she was any ways indebted, their full and entire debts; or who hath or shall have lost in any one day the sum or value of five pounds, or in the whole the sum or value of one hundred pounds within the space of twelve months next preceding his, her or their becoming bankrupt, in playing at or with cards, dice, tables, tennis, bowls, billiards, shovelboard, or in or by cock-fighting, horse-races, dog-matches, or foot-races, or other pastimes, game, or games whatsoever, or in or by bearing a share or part in the stakes, wagers, or adventures, or in or by betting on the sides or hands of such as do or shall play, act, ride, or run, as aforesaid; or that within one year before he or she became bankrupt, shall have lost the sum of one hundred pounds, by one or more contracts for the purchase, sale, refusal, or delivery of any stock of any company or corporation whatsoever, or any parts or shares of any government or publick funds or securities, where every such contract was not to be performed within one week from the time of the making such contract, or where the stock or other thing so bought or sold was not actually transferred or delivered in pursuance of such contract.

Bankrupts im-  
prisoned after  
certificate al-  
lowed, how to  
be discharged.

*Seet. 13.* " And be it further enacted by the authority aforesaid, That if any bankrupt, who shall have obtained his or her certificate from the acting commissioners, and such certificate shall have been allowed and confirmed as by this act is directed, shall be taken in execution, or detained in prison on account of any debts due or owing before he or she became bankrupt, by reason that judgment was obtained before such certificate was allowed and confirmed, it shall and may be lawful for any one or more of the judges of the court, wherein judgment has been so obtained against such bankrupt, on such bankrupt's producing his or her certificate allowed and confirmed, to order any sheriff or sheriffs, bailiff or officer, gaoler, or keeper of any prison, who hath or shall have any such bankrupt in his custody, by virtue of any such execution, to discharge such bankrupt out of custody on such execution without payment of any fee or reward; and such sheriff or sheriffs, bailiff or officer, gaoler or keeper is and are hereby required to discharge such bankrupt out of custody accordingly, and is and

are

are hereby indemnified from any action for an escape for his or their so doing.

*Seet. 14.* " And be it further enacted by the authority aforesaid, That upon certificate made under the hands and seals of the commissioners by such commission authorized, or to be authorized or the major part of them, that such commission is issued, and such person or persons proved before them to become bankrupt or bankrupts, it shall and may be lawful to and for all or any of the justices of his majesty's courts of *King's Bench*, or *Common Pleas*, or barons of the court of *Exchequer*, and to and for all and every the justices of the peace within that part of the kingdom of *Great Britain* called *England*, the dominion of *Wales*, and town of *Berwick upon Tweed*, and they are hereby impowered and required, upon application to them for that purpose made, to grant his or their warrant or warrants under his or their hands and seals for the taking and apprehending such person or persons, and him, her, or them to commit to the common gaol of the county where he, she, or they shall be so apprehended and taken, there to remain until he, she, or they be removed by order of the said commissioners, or the major part of them, by warrant under their hands and seals; and the gaoler or keeper, to whose custody such person or persons shall be committed, is hereby required to take and receive such person or persons into his custody, and forthwith to give notice to one or more of the said commissioners in the said commission named, of such person or persons being in his or their custody, to the intent the said commissioners may send their warrant to such gaoler or keeper (which they are hereby impowered and required forthwith to send) for the delivering such bankrupt or bankrupts to the person or persons named in such warrant; who shall be thereby authorized to convey and bring such person or persons to the said commissioners, in order to such examination and discovery as aforesaid; and the said commissioners are hereby likewise authorized and impowered by such their warrant, or any other warrant, to take and seize any of the goods, wares, merchandizes; and effects of such bankrupt or bankrupts (the necessary wearing apparel of such bankrupt, or of his wife or children, only excepted), and any of his, her, or their books, papers, or writings, which shall be then in the custody or possession of such bankrupt or bankrupts, or of any other person or persons, in any prison or prisons whatsoever, any custom or usage to the contrary in any wise notwithstanding.

Judges or justices may grant warrants to apprehend bankrupts not conforming.

Gaolers to give notice to commissioners.

Goods or books to be seized in prisons.

*Seet. 15.* " Provided always; and be it enacted by the authority aforesaid, That if any such person or persons so apprehended and taken, shall, within the time or times allowed by this act for that purpose, submit to be examined, and in all things conform, as if he, she or they had surrendered, as by this act such bankrupt or bankrupts is or are required, that then such person so submitting and conforming shall have and receive the benefit of this act, to all intents and purposes, as if he, she or they had voluntarily come in and surrendered himself, herself or themselves; any thing herein contained to the contrary thereof in any wise notwithstanding.

Bankrupts so apprehended, on conformity, to have the benefit of the act.

*Señ. 16.* " And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the said commissioners, or the major part of them, to examine as well by word of mouth, as on interrogatories in writing, all and every person and persons, against whom any commission of bankrupt is or shall be awarded, touching all matters relating to the trade, dealings, estate, and effects of all and every such bankrupt and bankrupts, and also to examine in the manner aforesaid all and every other person duly summoned before, or present at any meeting of the said commissioners, or the major part of them, touching all matters relating to the person, trade, dealings, estate and effects of all and every such bankrupt and bankrupts, and any act or acts of bankruptcy committed by him, her, or them, and also to take down or reduce into writing the answers of verbal examinations of every such bankrupt, or other person, had or taken before them as aforesaid; which examination, so taken down or reduced into writing, the party examined shall and is hereby required to sign and subscribe: And in case any such bankrupt or bankrupts, or other person or persons, shall refuse to answer, or shall not fully answer to the satisfaction of the commissioners, or the major part of them, all lawful questions put to him, her or them, by the said commissioners, or the major part of them, as well by word of mouth, as by interrogatories in writing, or shall refuse to sign and subscribe his, her or their examination so taken down or reduced into writing as aforesaid (not having a reasonable objection either to the wording thereof, or otherwise, to be allowed by the said commissioners) it shall and may be lawful to and for the said commissioners, or the major part of them, by warrant under their hands and seals, to commit him, her or them to such prison, as the said commissioners, or the major part of them, shall think fit, there to remain without bail or mainprize, until such time as such person or persons shall submit him, her or themselves to the said commissioners, and full answer make to the satisfaction of the said commissioners to all such questions, as shall be put to him, her or them, as aforesaid, and sign and subscribe such examination, as aforesaid, according to the true intent and meaning of this act.

Persons not answering in interrogatories of commissioners to be imprisoned;

*Señ. 17.* " Provided always, that in case any person or persons shall be committed by the said commissioners for refusing to answer, or not fully answering any question or questions put to him, her or them, by the said commissioners by word of mouth, or on interrogatories, that the said commissioners shall, in their warrant of commitment, specify such question or questions.

*Señ. 18.* " Provided also, that in case any person or persons committed by the commissioners warrant, by virtue of this or any other acts now in force concerning bankrupts, shall bring any *habeas corpus* in order to be discharged from any such commitment, and on the return of any such *habeas corpus*, there shall appear any such insufficiency whatsoever in the form of the warrant, whereby such person was committed, by reason whereof the party might be discharged of such commitment; that then it shall and may be lawful for the court or judge, before whom such party shall be so brought by *habeas corpus*, as aforesaid, and such court or judge shall

If *habeas corpus* be brought on such commitment,

shall, and is hereby required, by rule, order or warrant, to commit such person or persons to the same prison, there to remain as aforesaid, until he, she or they shall conform as aforesaid, unless it shall be made appear to such court or judge by the party committed, that he, she or they have fully answered all lawful questions put to him, her or them by the said commissioners; or in case such person was committed for not signing his, her or their examination, unless it shall appear to such court or judge, that the party so committed had a good and sufficient reason for refusing to sign the same. And in case any gaoler or keeper of any prison, to whom any such bankrupt or bankrupts, person or persons shall be so committed as aforesaid, shall wilfully suffer such bankrupt or bankrupts, person or persons, to escape from such prison, or to go without the walls or doors of the said prison, until he, she or they shall be duly discharged, as aforesaid, such gaoler or keeper shall for such his offence, being duly convicted by indictment or information, forfeit five hundred pounds of lawful money of *Great Britain* for the use of the creditors of such bankrupt or bankrupts.

the judge may recommit the prisoner.

Penalty on gaoler for escape 500l.

*Sett.* 19. " And be it further enacted, That the gaoler or keeper of such prison, as aforesaid, shall, upon request of any person or persons, being a creditor or creditors of such bankrupt, and having proved his, her or their debt, under the said commission, and producing a certificate thereof under the hands of the said commissioners, or the major part of them (which such commissioners are hereby required to give *gratis*) forthwith produce and shew such person or persons so committed as aforesaid to any such creditor or creditors requesting the same. And in case such gaoler or keeper of such prison shall refuse to shew, or shall not forthwith produce such person or persons so committed as aforesaid, and being in his actual custody at the time of such request, to such creditor or creditors of such bankrupt, requesting to see such person or persons committed as aforesaid, such gaoler and keeper of such prison shall forfeit for such his wilful refusal or neglect the sum of one hundred pounds of lawful money of *Great Britain*, for the use of the creditors of such bankrupt or bankrupts, to be recovered by action of debt in any of his majesty's courts of record at *Westminster*, in the name or names of the creditor or creditors requesting such sight of such prisoner.

Penalty on gaoler refusing to produce his prisoner.

*Sett.* 20. " And be it further enacted by the authority aforesaid, That all and every person and persons, who shall, at any time after the time allowed to such bankrupt to surrender and conform, as aforesaid, voluntarily come and make discovery of any part of such bankrupt's estate not before come to the knowledge of the assignees, either to the said assignees, or to the said commissioners authorized as aforesaid, or the major part of them, shall be allowed five pounds *per centum*, and such further and other reward as the assignees and the major part of the creditors in value present at any meeting of the creditors shall think fit, to be paid out of the neat proceed of such bankrupt's estate, which shall be recovered on such discovery, which shall be paid to the person or persons so discovering the same, by the assignee or assignees of such bankrupt's estate; and the assignee or assignees shall be allowed the same in their accounts.

Allowance to persons making discovery of bankrupts estate.



Penalty on  
persons con-  
cealing effects  
in trust.

*Secl. 21.* " And for the better discovery of the estate of a bankrupt, be it enacted by the authority aforesaid, That all and every person and persons, who shall have accepted of any trust or trusts, and shall wilfully conceal or protect any estate, real or personal, of any person or persons becoming bankrupt, as aforesaid, from his, her or their creditors, and shall not within forty-two days next after such commission shall issue forth, and notice thereof be given in the *London Gazette*, discover and disclose such trust and estate in writing to one or more of the commissioners or assignees of such bankrupt or bankrupts estate, and likewise submit him or herself to be examined by the commissioners, in and by the said commission authorized, or the major part of them, if thereunto required, and truly discover the same, shall forfeit the sum of one hundred pounds of lawful money of *Great Britain*, and double the value of the estate either real or personal so concealed, to and for the use and benefit of the said creditors, to be recovered by action of debt in any of his majesty's courts of record at *Westminster*, in the name of the assignee or assignees of the said commissioners, in which case full costs shall be allowed to either party.

7 Geo. 1.  
c. 31.

*Secl. 22.* " And whereas by an act made in the seventh year of his late majesty's reign, intituled, *An act for the explaining and making more effectual the several acts concerning bankrupts*, persons taking bills, bonds, promissory notes, or other personal security for their money payable at a future day, are enabled to prove their debts under a commission of bankruptcy, but not to petition for or join in petitioning for any new commission, which having been found to be inconvenient: Now it is hereby enacted by the authority aforesaid, That so much of the said act, as disables any such person from petitioning for, or joining in any petition for a commission against any person or persons, who have before committed any act of bankruptcy, is hereby repealed: And it shall and may be lawful hereafter for such person to petition for, or join in petitioning for any such commission of bankruptcy; any thing in the said act contained to the contrary thereof in any wise notwithstanding.

Persons hav-  
ing bonds or  
notes may  
join in peti-  
tioning for  
commissions.

Conditions of  
granting com-  
missions.

*Secl. 23.* " And for preventing the taking out commissions of bankrupts maliciously, be it enacted by the authority aforesaid, That no commission of bankrupt under the great seal of *Great Britain* shall, after the twenty-fourth day of *June* one thousand seven hundred and thirty-two, be awarded and issued out against any person whatsoever, upon the petition of one or more creditors, unless the single debt of the creditor, or of two or more persons being partners petitioning for the same, do amount to the sum of one hundred pounds, or upwards, or unless the debt of two creditors, so petitioning as aforesaid, shall amount to one hundred and fifty pounds, or upwards, or unless the debt of three or more creditors, so petitioning as aforesaid, shall amount to two hundred pounds, or upwards, and the creditor or creditors petitioning for such commission shall, before the same shall be granted, make an affidavit, or (being one of the people called *Quakers*) make a solemn affirmation in writing before one of the masters of the high court of *Chancery* (which oath

oath or affirmation they are hereby impowered to administer, and which shall be filed with the proper officer) of the truth and reality of such his, her and their respective debt and debts, likewise give bond to the lord chancellor, lord keeper, or commissioners of the great seal for the time being, in the penalty of two hundred pounds, to be conditioned for proving his, her or their debts, as well before the commissioners named in such commission, as upon a trial at law, in case the due issuing forth of the same shall be contested and tried, and also for proving the party a bankrupt at the time of taking out such commission, and further to proceed on such commission, as herein after is mentioned; and if such debt or debts shall not be really due or owing, or if after such commission taken out it cannot be proved that the party was a bankrupt at the time of the issuing of the said commission, but on the contrary it shall appear that such commission was taken out fraudulently or maliciously, that then the lord chancellor, lord keeper, or commissioners of the great seal for the time being, shall and may, upon petition of the party or parties grieved, examine into the same, and order satisfaction to be made to him, her or them, for the damages by him, her or them sustained; and for the better recovery thereof may, in case there be occasion, assign such bond or bonds to the party or parties so petitioning, who may sue for the same in his, her and their name and names; any law, custom, or usage to the contrary notwithstanding.

*Sett.* 24. " And whereas commissions of bankrupts are frequently taken out by persons, who by means of such commissions (on a composition proposed by the bankrupts) and on promise not to execute the same, prevail with and extort from the bankrupts their whole debts, or much greater part thereof than such bankrupts pay to their creditors, or otherwise get from such bankrupts goods, or other real or personal security, which is contrary to the true intent and meaning of the several statutes made concerning bankrupts, which said statutes intend, that all such bankrupts creditors shall be on an equal foot, and not one preferred before or paid more than another in respect of his or her debt: Be it therefore enacted by the authority aforesaid, That if any bankrupt or bankrupts shall, after issuing of any commission against him, her, or them, pay to the person or persons who sued out the same, or otherwise give or deliver to such person or persons, goods, or any other satisfaction or security for his, her, or their debt, whereby such person or persons suing out such commission shall privately have and receive more in [the pound, in respect of his, her or their debt, than the other creditors, such payment of money, delivery of goods, or giving greater or other security or satisfaction, shall be deemed and taken to be such an act of bankruptcy, whereby on good proof thereof such commission shall and may be superseded: And it shall be lawful for the lord chancellor, lord keeper, or commissioners for the custody of the great seal of *Great Britain* for the time being, to award to any creditor or creditors petitioning another commission; and such person or persons, so taking or receiving such goods or other satisfaction as aforesaid, shall forfeit and lose as well his, her, or their whole debt, as the whole he, she

Commissions fraudulently obtained to be superseded,

and another granted.

Penalty.

or

## Bankrupt.

or they shall have taken or received, and shall pay back and deliver up the same, or the full value thereof, to such person or persons as the said commissioners acting under such new commission shall appoint, in trust for, and to be divided amongst the other of the bankrupt's creditors in proportion to their respective debts.

The charge of commissions to be paid by the assignees.

*Sett.* 25. " And be it further enacted by the authority aforesaid, That the creditor or creditors, who shall petition for, and obtain any commission of bankrupt, shall be and is and are hereby obliged, at his, her or their own costs and expences, to sue forth and prosecute the same, until an assignee or assignees shall be chosen of such bankrupt's estate and effects; and the commissioners to be named in any such commission shall, at the same meeting which shall be appointed for the choice of the assignees, ascertain such costs, and by writing under their hands shall direct and order the assignee or assignees of such bankrupt's estate, who is and are hereby required to pay and reimburse such petitioning creditor or creditors such his, her or their costs and charges as aforesaid, out of the first monies or effects of the said bankrupt, that shall be got in and received under the said commission: and every creditor of the said bankrupt shall be at liberty to prove his, her or their debt or debts under the said commission, without paying any contribution or sum of money whatsoever for or on account of such debt or debts; any law or statute to the contrary notwithstanding.

Creditors may prove debts without paying contribution.

Notice of meeting to be given in the Gazette.

*Sett.* 26. " And be it further enacted by the authority aforesaid, That where any commission of bankrupt shall issue out from and after the twenty-fourth day of *June* one thousand seven hundred and thirty-two, the commissioners therein named, or the major part of them thereby authorized, shall forthwith, after they have declared the person or persons, against whom such commission shall issue, a bankrupt or bankrupts, cause notice thereof to be given in the *London Gazette*, and shall appoint a time and place for the creditors to meet, which meeting for the city of *London*, and all places within the bills of mortality, shall be at the *Guildhall* of the said city, in order to choose an assignee or assignees of the said bankrupt's estate and effects; at which meeting the said commissioners shall admit the proof of any creditor's debt, that shall live remote from the place of such meeting of the commissioners, by affidavit, or, being of the people called *Quakers*, by solemn affirmation, and also permit any person duly authorized by letter of attorney from such creditors, oath or affirmation being made of the due execution thereof, either by an affidavit sworn, or affirmation made before a master in *Chancery*, ordinary or extraordinary, or before the commissioners *viva voce* (which oath or affirmation they are hereby respectively authorized to administer) and in case of creditors residing in foreign parts, such affidavits or solemn affirmations to be made before a magistrate, where the party shall be residing, and shall together with such creditor's letters of attorney be attested by a notary publick, to vote in the choice of an assignee or assignees of such bankrupt's estate and effects in the place and stead of such creditor; and the commissioners, or the major part of them authorized, shall assign every such bankrupt's estate and effects unto such person or persons, as the major part in value of such creditors, ac-

Debts how to be proved.

Choice of assignees.

cording

cording to the several debts then proved, shall choose as aforesaid; and the assignee or assignees so chosen shall be obliged to keep one or more distinct book or books of account, wherein he or they shall duly enter all sum or sums of money, or other effects, which he or they shall have got in or received out of the said bankrupt's estate, to which book or books of account every creditor, who shall have proved his or her debt, shall at all seasonable times have free resort, and inspect the same as often as he or she shall think fit."

*Sett.* 27. " Provided always, and be it enacted by the authority aforesaid, That no creditor, or any other Person for and on the behalf of any creditor, shall be permitted to vote in such choice of assignee or assignees, whose debt, or the debt of the person or persons so authorizing him to vote, shall not amount to the sum of ten pounds or upwards. What persons not qualified to choose.

*Sett.* 28. " And be it further enacted by the authority aforesaid, That where it shall appear to the said commissioners, or the major part of them, that there hath been mutual credit given by the bankrupt and any other person, or mutual debts between the bankrupt and any other person, at any time before such person became bankrupt, the said commissioners, or the major part of them, or the assignees of such bankrupt's estate, shall state the account between them, and one debt may be set against another; and what shall appear to be due on either side on the balance of such account, and on setting such debts against one another, and no more, shall be claimed or paid on either side respectively. Mutual credit how to be settled.

*Sett.* 29. " And whereas many abuses have been committed by pretended creditors of bankrupts, be it enacted by the authority aforesaid, That if any person at any time hereafter shall, before the acting commissioners in any commission of bankrupt, or by affidavit or affirmation exhibited to them, swear or depose, or, being of the people called *Quakers*, affirm, that any sum of money is due to him or her from any bankrupt or bankrupts, which sum of money is not really due or owing, or shall swear or affirm, that more is due, than is really due or owing, knowing the same to be not due or owing, and that such oath or affirmation is false and untrue, and being thereof convicted by indictment or information, such person shall suffer the pains and penalties inflicted by the several statutes made and now in force against wilful perjury, and shall moreover be liable to pay double the sum so sworn or affirmed to be due or owing, as aforesaid, to be recovered and levied as other penalties and forfeitures are upon penal statutes after conviction to be levied and recovered; and such double sum shall be equally divided among all the creditors seeking relief under the said commission. Penalty on debts falsely claimed.

*Sett.* 30. " Provided always, and be it further enacted, That it shall and may be lawful for the said commissioners authorized as aforesaid, or the major part of them, as often as they shall see cause, for the better preserving and securing the bankrupt's estate, immediately to appoint one or more assignee or assignees of the estate and effects, or any part thereof; which assignee or assignees, or any of them, shall or may be removed or displaced, at the meeting of the creditors so to be appointed, as aforesaid, Commissioners may choose new assignees.

## Bankrupt.

Penalty on  
first assignees  
not delivering  
up the effects  
to the new  
ones.

for choice of assignees, if they or the major part in value of them (whose debts respectively amount to ten pounds, or upwards, as aforesaid) then present, and of such persons duly authorized, as aforesaid, shall think fit; and such assignee or assignees, as shall be so removed and displaced, shall deliver up and assign all the estate and effects of such bankrupt, which shall have come to his or their hands or possession, or which shall have been assigned by the said commissioners, as aforesaid, unto such other assignee or assignees who shall be so chosen by the creditors, as aforesaid; and all the estate and effects of the bankrupt, which shall be delivered up or assigned, shall be, to all intents and purposes, as effectually and legally vested in such new assignee or assignees, as if the first assignment had been made to him or them by the said commissioners: And if such first assignee or assignees shall refuse or neglect, by the space of ten days next after notice given of the said choice of such new assignee or assignees, and of his and their consent to accept such assignment, signified to the first assignee or assignees by writing under his or their hand or hands, to make such assignment and delivery, as aforesaid, every such first assignee or assignees shall respectively forfeit the sum of two hundred pounds, to be divided and distributed amongst the creditors, towards satisfaction of their debts, in such manner as the estate of the bankrupt is or ought to be divided and distributed, and to be recovered by action of debt, bill, plaint or information in any of his majesty's courts of record at *Westminster*, by such person or persons, as such the major part of the commissioners, authorized as aforesaid, shall appoint to sue for the same, with full costs of suit, wherein no privilege, protection, or wager in law, or more than one imparlance shall be allowed; any law, custom, or usage to the contrary notwithstanding.

Notice of such  
removal to be  
given in the  
Gazette.

*Sett.* 31. " And whereas it may be found necessary, that as well assignments of bankrupts estates already made by commissioners, as assignments hereafter to be made pursuant to the choice of creditors, should be vacated, and a new assignment or assignments be made of the debts and effects unreceived and not disposed by the then assignees to, other persons to be chosen by the creditors as aforesaid: Be it therefore enacted and declared by the authority aforesaid, That it shall and may be lawful to and for the lord chancellor, lord keeper, or commissioners for the custody of the great seal of *Great Britain* for the time being, upon petition of any creditors, to make such order therein as he or they shall think just and reasonable: And in case a new assignment shall be ordered to be made, as aforesaid, that then such debts, effects, and estate of such bankrupt, shall be thereby effectually and legally vested in such new assignee or assignees; and it shall and may be lawful for him and them to sue for the same in his or their name or names, and to discharge any action or suit, or to give any acquittance for such debts, as effectually to all intents and purposes, as the assignee or assignees in the former assignment might have done in case no new assignment had been made; any thing herein or in any former act contained or made to the contrary in anywise notwithstanding: and that the said commissioners shall cause publick notice to be given in the two *London Gazettes*

*Gazettes* that shall immediately follow the removal of such assignee or assignees, and the appointment of such other assignee or assignees as aforesaid, that such assignee or assignees is or are removed, and such other assignee or assignees appointed in his or their stead, and that such persons as are indebted to the said bankrupt's estate, do not pay such debt or debts to such assignee or assignees as shall be removed as aforesaid."

*Seet. 32.* " And whereas, by reason of the monies which are lodged in the hands of assignees until a dividend is made, assignees do oftentimes delay the dividing thereof, to the very great prejudice of the bankrupt's creditors: For preventing thereof, and to the end assignees may make speedy dividends of the estate and effects of such bankrupts, be it enacted by the authority aforesaid, That before the creditors shall proceed to the choice of an assignee or assignees of any bankrupt's estate, the major part in value of the said bankrupt's creditors then present shall, if they think fit, direct in what manner, how, and with whom, and where, the monies arising by, and to be received from time to time out of the bankrupt's estate, shall be paid in and remain, until the same shall be divided amongst all the creditors, as by this act is directed; to which rule and direction every such assignee and assignees, afterwards to be chosen, shall conform, as often as one hundred pounds shall be got in and received from such bankrupt's estate, and shall be and are hereby indemnified for what they shall do in pursuance of such direction of the said creditors, as aforesaid."

Creditors, before choosing assignees, to fix the method of dividends.

*Seet. 33.* " And be it further enacted by the authority aforesaid, That every person or persons chosen, or who shall be chosen assignee or assignees of the estate and effects of such bankrupt, shall, at some time after the expiration of four months, and within twelve months from the time of issuing of such commission, cause at least twenty-one days publick notice to be given in the *London Gazette*, of the time and place the commissioners and assignees intend to meet, to make a dividend or distribution of such bankrupt's estate and effects: at which time the creditors, who have not before proved their debts, shall then be at liberty to prove the same; which meeting for the city of *London*, and all places within the bills of mortality, shall be at the *Guildhall* of the said city; and upon every such meeting the assignee or assignees shall produce, to the said commissioners and creditors then present, fair and just accounts of all his and their receipts and payments touching the said bankrupt's estate and effects, and of what shall remain outstanding, and the particulars thereof; and shall, if the creditors then present, or the major part of them, require the same, be examined upon oath, or, being of the people called *Quakers*, upon solemn affirmation before the said commissioners, or the major part of them, touching the truth of such accounts; and in such accounts the said assignee or assignees shall be allowed and retain all such sum and sums of money, as they shall have paid and expended in suing out and prosecuting of such commission, and all other just allowances, on account of and by reason or means of their being assignee or assignees; and the said commissioners, or the major part of them, shall order such part of the neat produce of the said bankrupt's estate, as by such accounts or otherwise

Method of making dividends.

shall appear to be in the hands of the said assignees, as they or the major part of them shall think fit, to be forthwith divided amongst such of the bankrupt's creditors, who have duly proved their debts under such commission, in proportion to their several and respective debts; and the commissioners, or the major part of them, shall make such their order for a dividend in writing under their hands, and shall cause one part of such order to be filed amongst the proceedings under the said commission, and shall deliver unto each of the assignee or assignees, under such commission, a duplicate of such their order likewise under the hands of the said commissioners; which order of distribution shall contain an account of the time and place of making such order, and the sum total or *quantum* of all the debts proved under the said commission, and the sum total of the money remaining in the hands of the assignee or assignees to be divided, and how much in particular in the pound is then ordered to be paid to every creditor under the said commission; and the said assignee or assignees, in pursuance of such order, and without any deed or deeds of distribution to be made for that purpose, shall forthwith make such dividend and distribution accordingly, and shall take receipts, in a book to be kept for that purpose, from each creditor, for the part or share of such dividend or distribution, which he or they shall make and pay to each creditor respectively; and such order and receipt shall be a full and effectual discharge to such assignee, for so much as he shall fairly pay, pursuant to such order, as aforesaid."

Assignees,  
with consent  
of creditors,  
may submit  
disputes to  
arbitration.

*SECT. 34.* "And whereas assignees are, and may sometimes be prevented from making such speedy dividends of the estate and effects of bankrupts, as by this act is intended, by reason of debts due, or pretended and claimed to be due from such bankrupts, upon long and intricate accounts or demands, which are disputed or not admitted by the commissioners and creditors to be just and fair debts, and such claimants are thereby obliged to ascertain such their demands by actions or suits in law or equity, which are oftentimes many years depending, and many other differences and difficulties do arise under commissions of bankrupts, which might be determined by arbitration, if assignees had power to submit the same; be it therefore enacted by the authority aforesaid, That it shall and may be lawful to and for the assignee or assignees of any bankrupt's estate and effects, by and with the consent of the major part in value of the bankrupt's creditors, who shall have duly proved their debts under such commission, and who shall be present at any meeting of the said creditors, pursuant to notice to be for that purpose given in the *London Gazette*, to submit any difference or dispute between such assignee or assignees, and any person or persons whatsoever, for or on account, or by reason or means of any matter, cause, or thing whatsoever, relating to such bankrupt or bankrupts, his, her or their estate or effects, to the final end and determination of arbitrators to be chosen by the said assignee or assignees, and the major part in value of such creditors, and the party or parties with whom they shall have such difference, and to perform the award of such arbitrators, or otherwise to compound and agree the matters in difference and dispute between them,

in such manner as the said assignee or assignees, with such consent as aforesaid, shall think fit, and can agree, and the same shall be binding to all the creditors of the said bankrupt or bankrupts; and the assignees are hereby indemnified for what they shall fairly do according to the direction aforesaid."

*Sett.* 35. " And be it further also enacted by the authority aforesaid, That any assignee or assignees, made or chosen as aforesaid, shall be and is and are hereby impowered, by and with the consent of the major part of such bankrupt's creditors in value, who shall be present at a meeting to be had for that purpose, of which publick notice shall be given in the *London Gazette*, to make composition with any person or persons, debtors or accountants to such bankrupts, where the same shall appear necessary and reasonable, and to take such reasonable part, as can upon such composition be gotten, in full discharge of such debts and accounts; any law, custom, or usage to the contrary notwithstanding."

*Sett.* 36. " Provided always, and be it enacted by the authority aforesaid, That after such bankrupt or bankrupts shall have obtained his, her or their certificate, and the same shall be duly confirmed, as herein is mentioned, every such bankrupt or bankrupts shall, and is, and are hereby obliged to give his, her or their attendance, upon every reasonable notice in writing, to be given to him, her or them, or to be left at his, her or their usual place of abode, by the assignee or assignees, or their order, thereby requiring him, her or them, to attend the assignee or assignees of such bankrupt's estate, in order to make up, adjust or settle any account or accounts between such bankrupt or bankrupts, and any debtor to or creditor of such bankrupt's estate, or to attend any court or courts of record, in order to be examined touching the same, or for such other business, which such assignee or assignees shall judge necessary for getting in the said bankrupt's estate and effects, for the benefit of his, her or their creditors; for which said attendance the bankrupt shall be allowed and paid the sum of two shillings and six pence *per diem*, by such assignee or assignees, out of the bankrupt's estate; and in case such bankrupt or bankrupts shall neglect or refuse to attend, or on such attendance shall refuse to assist in such discovery, without good and sufficient cause to be shewn to the commissioners, or the major part of them, for such his, her or their neglect or refusal to be by them allowed as sufficient, such assignee or assignees making due proof thereof upon oath, or being of the people called *Quakers*, upon solemn affirmation before the said commissioners authorized as aforesaid, or the major part of them, the said commissioners, or the major part of them, are hereby impowered and required to issue a warrant or warrants, directed to such person or persons as they shall think proper, for apprehending such bankrupt or bankrupts, and him, her, or them, to commit to the county gaol, there to remain in close custody without bail or mainprize, until he, she or they shall duly conform to the satisfaction of the said commissioners authorized as aforesaid, and be by the said commissioners, or the special order of the lord chancellor, lord keeper, or commissioners for the custody of the great seal of Great Britain for the time being, or otherwise

Assignees with consent of creditors may compound for debts.

Bankrupts, after allowance of certificate, to attend assignees in settling accounts.

Allowance for attendance.

Imprisonment on non-attendance.



otherwise by due course of law discharged; and such gaoler or keeper of such prison, to which such bankrupt or bankrupts shall be committed; is hereby required to keep such person or persons in close custody, within the walls of the said prison, until he, she or they be duly discharged as aforesaid, under the pains and penalties before mentioned, for such gaoler or keeper suffering such prisoners, committed pursuant to this act, to escape and go at large.

Final dividend  
within 18  
months.

*Sec. 37.* "And be it further enacted by the authority aforesaid, That within eighteen months next after the issuing of any such commission as aforesaid, the assignee or assignees shall make a second dividend of the bankrupt's estate and effects, in case the same was not wholly divided upon the first dividend, and shall cause a notice to be inserted in the *London Gazette*, of the time and place the said commissioners intend to meet to make a second dividend and distribution of such bankrupt's estate or effects, and for the creditors, who shall not before have proved their debts, to come and prove the same; and at such meeting, every such assignee or assignees shall produce upon oath or affirmation, as aforesaid, his, her or their account or accounts of the bankrupt's estate and effects, and what upon the ballance thereof shall appear to be in his, her or their hands, shall, by the like order of the commissioners, or the major part of them, be forthwith divided among such of the bankrupt's creditors, who shall have made due proof of their debts, in proportion to their several and respective debts; which second dividend shall be final, unless any suit at law or in equity shall be depending, or any part of the estate standing out, that cannot have been disposed of, or that the major part of the creditors shall not have agreed to be sold and disposed of in manner aforesaid, or unless some other or future estate or effects of the said bankrupt shall afterwards come to, or vest in, the said assignee or assignees; in which case the said assignee or assignees shall, as soon as may be, convert such future or other estate and effects into money in manner aforesaid, and shall, within two months next after the same shall be converted into money as aforesaid, by the like order of the commissioners, or the major part of them, divide the same, among such bankrupt's creditors, who shall have made due proof of their debts under such commission.

Exceptions.

No suit in  
equity to be  
commenced  
without con-  
sent of credi-  
tors.

*Sec. 38.* "Provided always, that no suit in equity shall be commenced by any assignee or assignees, without the consent of the major part in value of the creditors of such bankrupt, who shall be present at a meeting of the creditors, pursuant to notice to be given in the *London Gazette* for that purpose."

Bankers, bro-  
kers, and fac-  
tors liable to  
statutes.

*Sec. 39.* "And whereas persons dealing as bankers, brokers, and factors, are frequently intrusted with great sums of money, and with goods and effects of very great value belonging to other persons: it is hereby further enacted, that such bankers, brokers, and factors, shall be, and are hereby declared to be subject and liable to this and other the statutes made concerning bankrupts."

Persons not li-  
able.

*Sec. 40.* "Provided always, and it is hereby further declared and enacted by the authority aforesaid, that no farmer, grazier, or drover of cattle, or any

any person or persons, who is, or are, or shall be receiver general of the taxes granted by act of parliament, shall be intituled as such to any of the benefits given by this act, or be deemed a bankrupt within the same, or within any of the statutes now in force concerning bankrupts; any law, custom or usage to the contrary notwithstanding."

*Sec. 41.* And whereas commissions of bankrupts, and the depositions taken before the commissioners of bankrupts, and the proceedings upon such commissions, are most commonly kept by such persons as act as clerks or secretaries to such commissioners, and, by reason of the death of such clerks or secretaries, are many times lost and mislaid, by means whereof such persons, as have or may purchase any messuages, lands, tenements, or hereditaments, under any commission grounded upon the statutes made concerning bankrupts, may be disabled to make out their right and title to the same: And there being no certain place where the creditors of any bankrupt, or any person or persons claiming any estate or interest in any messuages, lands, tenements, or hereditaments, by or under any such commission as aforesaid, can have recourse to such commission and the proceedings thereupon; and such commissions, depositions, and proceedings, in case they can be produced, are not at present of record, nor can be given in evidence, which may be of very evil consequence to such purchasers or persons claiming as aforesaid: Be it therefore further enacted by the authority aforesaid, That upon the petition of any person or persons to the lord chancellor, lord keeper, or commissioners for the custody of the great seal of *Great Britain*, praying, that such commissions, and the depositions taken thereon, or any part of such depositions, and such certificates so to be allowed and confirmed, as aforesaid, or any certificates heretofore allowed and confirmed, or any other matters or things relating to the said commissions, or the proceedings thereupon, may be entred of record, the lord high chancellor, lord keeper, or commissioners of the great seal, shall and may direct and order such commissions, depositions, proceedings, and certificates, or other matters or things, to be entred of record; and in case of the death of the witnesses proving such bankruptcy, or in case the said commissions, depositions, proceedings, or other matters or things, shall be lost or mislaid, a true copy of the record of such commissions, depositions, and proceedings, or other matters or things, signed and attested as herein after is mentioned, shall and may, upon all occasions, be given in evidence to prove such commissions, and the bankruptcy of such person, against whom such commission hath been or shall be awarded, or other matters or things; any law, usage, or custom, to the contrary notwithstanding: And all certificates, which have been allowed and confirmed, or to be allowed and confirmed, and entred of record, as aforesaid, or a true copy of every certificate signed and attested as herein after mentioned, shall and may be given in evidence in any of his majesty's courts of record, and be, without any further proof, deemed, adjudged, and taken to be a full and effectual bar and discharge of and against any action or suit, which shall be commenced or brought by any creditor or creditors of such bankrupt, for any debt or demand contracted, due, or demandable before

Proceedings to  
be entred on  
Record,

by direction of  
the lord chan-  
cellor.

the

Liberty to  
search.

the issuing of such commission, unless any creditor or creditors of the person that hath such certificate, shall prove that such certificate was fraudulently obtained; in which case costs shall be allowed to either party, as in other common cases: And to the end any creditor or other person or persons may know where to search and see whether such commission hath issued, and find what depositions have been taken by virtue thereof, and what proceedings have been thereupon, and whether the said bankrupt hath made such affidavit or affirmation, as aforesaid, and whether such certificates are entred of record, as aforesaid, and all other matters or things, which shall be entred of record in pursuance of this act, the lord high chancellor, lord keeper, or commissioners for the custody of the great seal, shall appoint a certain proper place near the Inns of Court, where all and every the matters aforesaid shall be entred of record, where all persons shall be at liberty to search and see if the same are duly entred of record; and the lord chancellor, lord keeper, or commissioners shall, by a writing under his or their hands, appoint a proper person, who shall, by himself, or his sufficient deputy, to be approved by the lord high chancellor, lord keeper, or commissioners, by a writing under his or their hands, enter of record such commissions, depositions, proceedings, and certificates, and other matters and things, and have the custody of the entries thereof; and also appoint such fee and reward to be paid to such person, for his labour and pains therein, as the lord high chancellor, lord keeper, or commissioners shall think reasonable, not exceeding what is usually paid in the like cases; and that the person so to be appointed, and his deputy, shall continue to enter of record all and every the matters and things aforesaid, and to have the custody of the same, so long as he or they shall respectively behave themselves well in entering the same of record, and keeping such entries, and shall not be removed, but by order in writing under the hand of the lord high chancellor, lord keeper, or commissioners, on a good and sufficient cause therein specified; and in case such person shall die, or be, as aforesaid, removed, the lord high chancellor, lord keeper, or commissioners for the time being, shall and may, in writing under his or their hands, appoint another person to enter the same of record, who shall have the custody of the entries thereof, and shall have and receive the like fee and reward for his labour and pains therein.

Clause to prevent unnecessary  
expences.

*Sect. 42.* And whereas the suing out and prosecuting of commissions of bankrupts is at present very expensive, to the great prejudice of the bankrupt and his creditors: Be it further enacted by the authority aforesaid, That there shall not be paid or allowed by the creditors, or out of the estate of the bankrupt, any monies whatsoever for expences in eating or drinking of the commissioners, or of any other persons at the times of the meeting of the said commissioners, or any of the creditors: And that no schedule shall be annexed to any deed of assignment of the personal estate of such bankrupt from the commissioners to the assignee or assignees of the said estate: And if any commissioner or commissioners in any commission shall order any such expence to be made, or eat or drink at any such meeting at the charge of the creditors, or out of the estate of such bankrupt,

bankrupt, or receive or take above the sum of twenty shillings each commissioner for each respective meeting, every such commissioner so offending shall be disabled for ever to act as a commissioner, in such or any other commission founded on this act, or any of the statutes made concerning bankrupts.

*Sett.* 43. Provided always, and be it further enacted by the authority aforesaid, That the said commissioners, authorized as aforesaid, and every of them, shall not be capable of acting as a commissioner or commissioners in the execution of any of the powers and authorities given and granted by this present act, or any other act or acts of parliament now in force concerning bankrupts, after the twenty-fourth day of June one thousand seven hundred and thirty-two (unless it be the power hereby given of administering oaths to commissioners), until such time as he and they respectively shall have taken an oath to the effect following; that is to say,

*I A. B. do swear, that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me as a commissioner in a commission of bankrupt against* Commissioners Oath.  
*and that without*  
*favour or affection, prejudice or Malice.*

So help me God.

*Sett.* 44. "Which oath any two or more of the said commissioners are hereby impowered and required to administer to each other in the same commission named and authorized; and they the said commissioners shall and are hereby required to enter and keep a memorial or memorials thereof, signed by them respectively, among the depositions and other proceedings on each respective commission that shall be issued forth by virtue of this act, or any other act or acts of parliament now in force concerning bankrupts." A memorial thereof to be registered.

*Sett.* 45. "And be it further enacted by the authority aforesaid, That no commission of bankrupt shall abate by reason of the death of his present majesty (whom God long preserve) his heirs or successors, but such commissions shall continue in full force; and if it shall be necessary to renew any such commission by reason of the death of the commissioners named in such commission, so that a sufficient number of commissioners shall not be living who can act therein, or for any other cause, in every such case such commission shall be renewed, and but half of the fees usually paid upon granting or obtaining of commissions of bankrupt shall be paid for any such renewed commissions." Commissions not to abate by the death of his majesty, &c.

*Sett.* 46. "And to the end that commissions of bankrupt may be carried on and prosecuted with as little expence as reasonably may be, be it enacted by the authority aforesaid, That all bills of fees or disbursements claimed or demanded by any solicitor, clerk, or attorney, employed under any commission of bankrupt, shall be settled, adjusted, and certified by one of the masters of the court of chancery; and so much as the master shall Bills of fees, &c., to be settled by a master in chancery.

certify to be due to such clerk, solicitor, or attorney, and no more, shall be paid by the assignee under such commission; and the master, who shall settle and adjust such bill, shall have and receive for his care in settling and adjusting the same, as also for his certificate thereof, the sum of twenty shillings, and no more.

Certificates of bankrupts before 14 May 1729, on conformity, confirmed;

*Stat. 47.* "And whereas several bankrupts have either through inadvertency, or the intricacy and multiplicity of their affairs, failed to obtain, within the time limited, certificates allowed as directed by a clause in an act passed in the third year of the reign of his present majesty (amongst other things) for relief of bankrupts whose certificates were not allowed before the expiration of a late act for the better preventing frauds committed by bankrupts, now expired, notwithstanding they have discovered all their estate and effects, and delivered the same up for the benefit of their creditors, and been conformable unto the said act in other particulars; Be it therefore further enacted by the authority aforesaid, That all and every bankrupt and bankrupts, who was or were declared a bankrupt or bankrupts on or before the fourteenth day of *May* one thousand seven hundred and twenty-nine, and have discovered all their estate and effects, and have delivered up the same for the benefit of their creditors, shall be intitled to all and singular the relief, benefit, and advantages, and be subject and liable to all the penalties mentioned or contained in the act of parliament passed in the fifth year of the reign of his late majesty king *George* the first, intituled, An act for the better preventing frauds committed by bankrupts, if they already have obtained, or shall hereafter, at any time before the twenty-fifth day of *March* one thousand seven hundred and thirty-three, obtain certificates of their conformity pursuant to the said act; and such certificates shall be allowed and confirmed as the said act directs; any thing herein contained to the contrary notwithstanding.

and proceedings against them discharged.

*Stat. 48.* "And whereas actions may have been brought against such bankrupts, and other proceedings had thereon for causes and matters arising and growing due before the time of the bankruptcy of such bankrupts, be it further enacted by the authority aforesaid, That all such actions, and all proceedings thereon for any such causes or matters, shall be and are hereby discharged against such bankrupts and their bail, so obtaining such certificates allowed as aforesaid.

Duration of the act.

*Stat. 49.* "And be it further enacted by the authority aforesaid, That this act shall continue and be in force for the space of three years, from the twenty-fourth day of *June* one thousand seven hundred and thirty-two, and from thence to the end of the then next session of parliament, and no longer. *Continued by several acts, and by the last continuance (4 Geo. 3. c. 36.) it is of force till September 29, 1771, and to the end of the then next session of parliament.*

19 Geo. 2. c. 32.

**Stat. 19 Geo. 2. c. 32.** [*A. D. 1746. intituled*] "An act for amending the laws relating to bankrupts."

"Whereas many persons within the description of, and liable to the statutes concerning bankrupts, frequently commit secret acts of bankruptcy unknown

unknown to their ceditors and other persons, with whom, in the course of trade they have dealings and transactions: and after the committing thereof continue to appear publickly and carry on their trade and dealings, by buying and selling of goods and merchandizes, drawing, accepting, and negotiating bills of exchange, and paying and receiving money, on account thereof, in the usual way of trade, and in the same open and publick manner as if they were solvent persons, and had not become bankrupt: And whereas the permitting such secret acts of bankruptcy to avoid and defeat payments, really and *bona fide* made in the cases and under the circumstances above mentioned, where the persons receiving the same had not notice of, or were privy to such persons having committed any act of bankruptcy, will be a great discouragement to trade and commerce, and a prejudice to credit in general: Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-ninth day of *October*, in the year of our lord one thousand seven hundred and forty six, no person who is or shall be really and *bona fide* a creditor of any bankrupt, for or in respect of goods really and *bona fide* sold to such bankrupt, or for or in respect of any bill or bills of exchange really and *bona fide* drawn, negotiated, or accepted by such bankrupt, in the usual and ordinary course of trade and dealing, shall be liable to refund or repay to the assignee or assignees of such bankrupt's estate, any money which, before the suing forth of such commission, was really and *bona fide*, and in the usual and ordinary course of trade and dealing, received by such person of any such bankrupt, before such time as the person receiving the same shall know, understand or have notice that he is become a bankrupt, or that he is in insolvent circumstances.

*Sec. 2.* " And whereas merchants, and other traders, frequently lend money on bottom-ree, or at respondentia, and in the course of their trade frequently cause their ships or vessels, and the goods and merchandizes loaded thereon, to be insured; and where commissions of bankruptcy have issued against the obligor in such bottom-ree, or respondentia bond, or the under-writer, or assurer in such assurance, before the loss of the ship or goods, in such bond or policy of insurance mentioned, hath happened, it hath been made a question, whether the obligee or obligees in such bond, or the assured in such policy of insurance, should be let in to prove their debts, or be admitted to have any benefit or dividend under such commission, which may be a discouragement to trade: For remedy whereof be it enacted by the authority aforesaid, That from and after the said twenty-ninth day of *October*, the obligee in any bottom-ree, or respondentia bond, and the assured in any policy of Assurance, made and entered into upon a good and valuable consideration *bona fide*, shall be admitted to claim; and after the loss or contingency shall have happened, to prove his, her or their debt and demands in respect of such bond or policy of insurance, in like manner as if the loss or contingency had happened before the time of the issuing of the commission of bankruptcy against such obligor

Dividends. or insurer; and shall be intitled unto, and shall have and receive a proportionable part, share, and dividend of such bankrupt's estate, in proportion to the other creditors of such bankrupt, in like manner as if such loss or contingency had happened before such commission issued; and all and every person or persons against whom, from and after the said twenty-ninth day of *October*, any commission of bankruptcy shall be awarded, shall be discharged of and from the debt or debts owing by him, her or them, on every such bond and policy of insurance, as aforesaid, and shall have the benefit of the several statutes now in force against bankrupts, in like manner, to all intents and purposes, as if such loss or contingency had happened, and the money due in respect thereof had become payable, before the time of the issuing of such commission."

Bankrupts discharged from debt on policy of insurance, &c.

24 Geo. 2.  
57.

**Stat.** 24 *Geo. 2. c. 57.* [*A. D. 1751*] *made among other purposes*, "To make some further provisions in relation to the signing of certificates for the discharge of bankrupts."

*Sett. 9.* "And whereas many abuses have been committed by bankrupts, and persons who, with their privity, have attempted to prove fictitious and pretended debts under commissions of bankruptcy, in order that such persons might be enabled to sign their consent to the certificates for discharging such bankrupts from their debts: For remedy whereof, and in order to prevent the like fraudulent and wicked practices for the future, Be it enacted by the authority aforesaid, That where any persons shall fraudulently swear or depose, or being of the people called *Quakers* affirm, before the major part of the commissioners named in any commission of bankruptcy, or by affidavit or affirmation exhibited to them, that a sum of money is due to him or her from any bankrupt or bankrupt's, which shall in fact not be really and truly so due or owing; and shall, in respect of such fictitious and pretended debt, sign his or her consent to the certificate for such bankrupt's discharge from his debts; that in every such case, unless such bankrupt shall, before such time as the major part of the said commissioners shall have signed such certificate, by writing by him to be signed and delivered to one or more of the said commissioners, or to one or more of the assignees of his estate and effects under such commission, disclose the said fraud, and object to the reality of such debt, such certificate shall be null and void to all intents and purposes, and such bankrupt shall not in that case be intitled to be discharged from his debts, or to have or receive any of the benefits or allowances given or allowed to bankrupts by the said act of the fifth year of his present majesty's reign; any thing therein contained to the contrary thereof in any wise notwithstanding."

Persons swearing to a fictitious debt from a bankrupt,

and signing the certificate;

unless the bankrupt shall disclose the fraud,

the certificate to be null, &c.

Letter of attorney from Creditor in foreign parts, to authorize signing certificate

*Sett. 10.* "And it is hereby enacted, that where any creditor or creditors of any bankrupt reside in foreign parts, the letter of attorney of such creditor, attested by a notary publick in the usual form, shall be a sufficient evidence of the power and authority by which any person thereby authorized shall sign any bankrupt's certificate; any thing in the said act of the fifth year

year of his present majesty's reign to the contrary thereof in any wise notwithstanding."

**Stat. 4 Geo. 3. c. 33.** [*A. D. 1764 intituled*] "An act for preventing <sup>4 Geo. 3. c. 33.</sup> inconveniencies arising in cases of merchants, and such other persons as are within the description of the statutes relating to bankrupts, being intituled to privilege of parliament, and becoming insolvent."

"Whereas, merchants, bankers, brokers, factors, scriveners, and traders, within the description of the statutes relating to bankrupts, having privilege of parliament, are not compellable to pay their just debts, or to become bankrupts, by reason of the freedom of their persons from arrests upon civil process; and some doubts have also arisen, whether in cases of bankruptcy, a commission can be sued out during the continuance of such privilege: To remedy which inconveniences, and to support the honour and dignity of parliament, and good faith and credit in commercial dealings, which require, that in such cases, the laws should have their due course, and that no such merchants, bankers, brokers, factors, scriveners, or traders, in case of actual insolvency, should, by any privilege whatever, be exempted from doing equal justice to all their creditors; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and it is hereby enacted by the authority of the same, That from and after the eleventh day of *May*, one thousand seven hundred and sixty-four, it shall be lawful for any single creditor, or two or more creditors, being partners, whose debt or debts shall amount to one hundred pounds or upwards, and for any two creditors whose debts shall amount to one hundred and fifty pounds or upwards, or any three or more creditors whose debts shall amount to two hundred pounds or upwards, of any person or persons deemed a merchant, banker, broker, factor, scrivener, or trader or traders, within the description of the acts of parliament relating to bankrupts, having privilege of parliament, at any time, upon affidavit or affidavits being made and filed on record in any of his majesty's courts at *Westminster* by such creditor or creditors, that such debt or debts is or are justly due to him or them respectively, and that every such debtor, as he or they verily believe, is a merchant, banker, broker, factor, scrivener, or trader, within the description of the statutes relating to bankrupts, to sue out of the same court a summons, or an original bill and summons, against such merchant, banker, broker, factor, scrivener, or trader, and serve him with a copy thereof; and if such merchant, banker, broker, factor, scrivener, or trader, shall not within two months after personal service of such summons (affidavits of the debt or debts having been duly made and filed as aforesaid) pay, secure, or compound for, such debt or debts, to the satisfaction of such creditor or creditors, or enter into a bond in such sum, and with two such sufficient sureties, as any of the judges, of that court out of which such summons shall issue shall approve of, to pay such sum as shall be recovered in such action or actions, together with such costs as shall be given in the same, he shall be accounted and adjudged a bankrupt from the time of the service of such sum-

Preamble.  
  
From and after 11 May 1764, creditors, to a certain value, of any merchant, &c. within the description of the laws relating to bankrupts, having privilege of parliament, may, upon affidavit made of the debt, and filed in any of the courts at Westminster, sue out a summons, or original bill, &c. against such debtor: and if he shall not, within 2 months, pay, secure, or compound for the debt, he shall be adjudged a bankrupt; and



a commission  
may be ac-  
cordingly sued  
out and against  
him.

But this act is  
not to extend to  
such debts as  
were contrac-  
ted before 8  
March, 1764.

But any mer-  
chant, &c.  
committing  
an act of bank-  
ruptcy after  
the last day of  
this session, the  
creditors may  
sue out a com-  
mission against  
him, and the

summons; and any creditor or creditors may sue out a commission against any such person, and proceed thereon in like manner as against other bankrupts.

*Sec. 2.* "Provided always, and it is hereby declared, That this act shall not extend, or be deemed or construed to extend to any of such debts as aforesaid contracted before the eighth day of *March* one thousand seven hundred and sixty-four; any thing herein before contained to the contrary thereof in any wise notwithstanding.

*Sec. 3.* "And be it further enacted by the authority aforesaid, That if any merchant, banker, broker, factor, scrivener, or trader, shall, after the last day of this session of parliament, commit any act of bankruptcy, that then, and in such case, any creditor or creditors as aforesaid may sue out a commission of bankrupt against such merchant, banker, broker, scrivener, or trader; and the commissioners in such commission, and other persons, may proceed thereon in like manner as against other bankrupts; any privilege of parliament to the contrary notwithstanding."

the commissioners proceed therein, as against other bankrupts, notwithstanding his privilege.

Persons inti-  
tled to privi-  
lege not sub-  
ject to arrest,  
&c. except in  
cases made  
felony.

Who may be  
a bankrupt.

*Sec. 4.* "Provided nevertheless, and be it enacted, That nothing in this act shall subject any person intitled to privilege of parliament to be arrested, or imprisoned, during the time of such privilege, except in cases made felony by the acts relating to bankrupts, or any of them."

"Any merchant or other person, using or exercising the trade of merchandize, by way of bargaining, exchange, rechange, bartry, chevifance, or otherwise, in gros or by retail; or seeking his or her trade of living, by buying and selling; and being subject born of this realm, or of any the queen's dominions, or denizen, shall be reputed, deemed and taken for a bankrupt." *Stat. 13 Eliz. c. 7.* See page 245.

*Any merchant or other person*] Every man or woman, who gets his or her living by buying and selling, by trade or merchandize, may come under the denomination of a bankrupt, upon his or her failing in the world. *Cro. Car. 549. Mar. 34 pl. 67.*

*Using or exercising the trade of merchandize*] Though the party has left off his trade for some time, yet if he absconds, &c. for debt contracted during his trade, he is still liable to the bankrupt laws. *Sid. 411. pl. 7. Lev. 17. 3 Keb. 451. pl. Green 6.* So he is for debts contracted in his trade, tho' newly secured after his leaving off his trade. *1 Com. Dig. 521.* Or if he leaves off his trade, but puts his stock into the hands of another with whom he is partner in gain and loss. *Palm. 325. 1 Bur. Rep. 8.* Or if he has effects of his trade in his hands, and upon the credit of them contracts debts, though he does not buy any more goods. *Ventr. 166.* or if he becomes security for another, because he is trusted upon the reputation of his stock and dealings, as well where he is security, as where he contracts for his own debts. *Palm. 325.*

*By way of bargaining, exchange, rechange*] Drawing and redrawing bills of exchange for large sums of money, and a continuation of it, is a trafficking

trafficking in *exchange*, and a trading which will make a man liable to a commission of bankrupt, though a loss ensues to the bankrupt by so doing. 1 *Atk. Rep.* 128.

*Chevisance*] *Chevisance* comes from the French word *Chevir*, *Venir à chef de quelque chose*, to come to the end or head of a business: And because the perfecting of a bargain is the drawing of the matter to a head, this word *Chevisance* is used for *bargaining* in the stat. 13 *Eliz. c. 7. &c.* *Cowell. Termes de la ley.* 2 *Du Fresne's Glossary* 569.

*Being a natural-born subject*] The benefits, as well as the penal parts of the bankrupt laws, are extended as well to *aliens*, as to natural-born subjects; being intended entirely for the detection of frauds, in which aliens are often as deeply concerned as natives. 2 *Black. Com.* 474, 475. And the laws made against bankrupts shall be beneficially construed for the benefit of creditors. *Stat. 21 Jac. 1. c. 19.* See page 257.

Bankers, brokers, and factors are subject to the laws concerning bank- Bankers, &c.  
rupts. *Stat. 5 Geo. 2. c. 30. sect. 39.* See page 286.

A commission of bankruptcy was taken out against a clergyman, who insisted, that as he is a clergyman, he is not liable to become a bankrupt within the intent of any of the bankrupt statutes; lord chancellor *Hardwicke* would not supersede the commission, or direct an issue, but left the petitioner to his action at law. 1 *Atk. Rep.* 196. The stat. 21 *Hen. c. 13. sect. 5.* (whereby it is enacted, that no spiritual person shall buy to sell again any merchandize, corn, cattle, &c.) will not exempt a clergyman from being a bankrupt, for he cannot take advantage of the breach of one law to excuse him from the breach of another. 1 *Atk.* 199.

Though the trade be a very inferior one, yet if the party get his living thereby, it will be a sufficient (1 *Com. Dig.* 521) trading to make him bankrupt; as carpenters, or ship-carpenters. 3 *Mod. Rep.* 155. Lord *Raym.* 741. but it seems otherwise of a mere working carpenter. 3 *Mod.* 155.

Cow-keepers may be bankrupts. *Goodinge* 13. So may dyers. *Cro. Jac.* 585. pl. 6. See *Gilb. Cas.* 116. 10 *Mod.* 196. Viſtuallers may be- &c.  
come bankrupts. Lord *Raym.* 287. 12 *Mod.* 159.

Though the party does not sell the same wares which he buys, but converts them to saleable commodities, and then sells them (*Com. Dig.* 521); as bakers (3 *Mod.* 330), brewers (*Com. Dig.* 521); clothiers, who buy wool, and convert it to cloths (*Com. Dig.* 521); goldsmiths (*Stone* 120); ironmongers (*Com. Dig.* 521) who buy rod or bar irons, and cause it to be worked up into wares; locksmiths (*Com. Dig.* 521); milliners (*Lex mercat' rediviv.* 448); nailers (*Good.* 12); salesmen (*Com. Dig.* 521); shoemakers (*Com. Dig.* 521); smiths (2 *Black. Com.* 476); tanners (3 *Mod.* 330. *Hut.* 46); taylors (*Read. stat. L.* 185); weavers (*Cro. Jac.* 585), and the like; for here though part of the gain is by bodily labour, and not by buying and selling, yet they are within the statutes of bankrupts; for the labour is only in melioration of the commodity, and rendering it more fit for sale. 2 *Black. Com.* 476.

Where a person carries on a trade in one kingdom, belonging to the crown of *Great Britain*, and comes over to another, a commission may be taken  
Traders out of the kingdom.

taken out by a creditor in the place where he then happens to be, as he has traded to this kingdom, and contracted debts here. 1 *Atk.* 82.

Officer, &c. Lord *Hardwicke* said, that if an officer in the army should become a bankrupt, he should have no doubt but he had a power to lay his hands upon his pay, for the benefit of his creditors. 1 *Atk. Rep.* 214.

Feme covert in London, &c. A feme covert in *London*, being a sole trader, according to the custom is liable to a commission of bankrupt. *Com. Dig.* 521. 2 *Black. Com.* 477. cites *La Vie v. Philips*, *Mich.* 6 *Geo.* 3. *B. R.*

Petition to supersede a commission of bankrupt upon a suggestion of the party's being a married woman at the time the commission issued, and the wife of the petitioner; lord chancellor *Hardwicke* said, that as the party was admitted to be the daughter of a freeman of *London*, and appeared plainly to be a separate trader, by the custom of *London* she was clearly liable to a bankruptcy, notwithstanding her coverture. *Atk. Rep.* 206.

Barriſter, &c. A gentleman at the bar, who had a colliery and dealt in coals, at *Durham*, was held such a trader as might be a bankrupt. *Stra.* 514. 8 *Mod.* 46, 47.

Peers, &c. A peer or a member of the house of commons, if they will trade, are liable to a commission of bankruptcy. By lord *Hardwicke*. 1 *Atk. Rep.* 201. See the stat. 4 *Geo.* 3. c. 33. in page 303.

Pawnbrokers, &c. Lord *Hardwicke* inclined to think that pawnbrokers are within the statutes of bankrupts, and seem particularly included in the general word *broker* in sect. 39. of stat. 5 *Geo.* 2. (See page 286); and so is a public officer, as an exciseman, &c. if he will trade. 1 *Atk.* 206.

Physician, &c. Physicians may be bankrupts. *Dav.* 9.

Scrivener, &c. A scrivener may be a bankrupt. *Stat.* 21 *Jac.* 1. c. 19. sect. 2. See page 257. See 2 lord *Raym.* 851.

The reason that scriveners, (who were more numerous formerly than in later days, *Atk.* 218) were included by the above act of *Jac.* 1. was for the relief of their creditors; whom they have otherwise more opportunities of defrauding than any other set of dealers; and they are properly to be looked upon as traders, since they make merchandize of money, in the same manner as other merchants do of goods and other moveable chattels. 2 *Black. Com.* 475.

Who may not be bankrupts. Adventurers in the *East India* or *Guinea* Company, or in the Royal fishing trade, are not liable to the bankrupt laws, on account of their stock in the said companies or trades. *Stat.* 13 & 14 *Car.* 2. c. 24. sect. 3. See page 263.

No member of the bank of *England* shall be deemed a bankrupt on account of his stock, or be liable to any of the statutes made against bankrupts. 7 & 8 *Will.* 3. c. 31. 8 & 9 *Will.* 3. c. 20. sect. 47. 5 *Ann.* c. 13. 7 *Ann.* c. 7. 3 *Geo.* 1. c. 8. sect. 43, &c. &c. Buying and selling bank stock, or other government securities will not make a man a bankrupt, they not being goods, wares, or merchandizes within the intent of the statute, by which a profit may be fairly made. 2 *P. Will.* 308. 2 *Black. Com.* 476.

No member of the *East-India* company shall be a bankrupt, on account of his stock in the said company. *Stat.* 9 & 10 *Will.* 3. c. 44. Nor any member

member of the *South-sea* company, on account of his stock in the said company. *Stat. 9 Ann. c. 21. 3 Geo. 1. c. 9. 5 Geo. 1. c. 19. 6 Geo. 1. c. 4. 8 Geo. 1. c. 21. sect. 12.* Nor any member of the *Royal Exchange*, or *London Insurance Companies.* *Stat. 6 Geo. 1. c. 18. sect. 10.*

No farmer, grazier, or drover of cattle, or any receiver general of taxes shall be deemed a bankrupt. *Stat. 5 Geo. 2. c. 30. sect. 40.* See page

The particular acts of bankruptcy appear from the several statutes to be, 1. To depart the realm. 2. To begin to keep his house. 3. To absent himself. 4. To take sanctuary. 5. To suffer himself willingly to be arrested for any debt, or other thing, not grown or due for money delivered, wares sold, or any other just or lawful cause, or good consideration or purposes. 6. To suffer himself to be outlawed. 7. To yield himself to prison. 8. To depart from his dwelling house, to the intent or purpose to defraud or hinder a just creditor or creditors of his or their just debt or duty. 9. Willingly or fraudulently to procure himself to be arrested, or his goods, money, or chattels to be attached or sequestred. 10. To make any fraudulent grant or conveyance of his lands, tenements, goods, or chattels, to the intent, or whereby his creditors shall and may be defeated or delayed for the recovery of their just debts. (See *Stat. 13 El. c. 7. sect. 1.* in page 245. *1 Jac. 1. c. 15. sect. 2.* in page 251.) 11. Obtaining any protection, otherwise than being lawfully protected by privilege of parliament. 12. Preferring unto his majesty, or unto any of the king's courts, any petition or bill against his creditors, or any of them, thereby desiring or endeavouring to compel them to accept less than their just and principal debt, or to procure time or longer days of payment, than was given at the time of their original contract. 13. Being arrested for debt, shall, after such arrest, lie in prison two months upon that or any other arrest, or detention for debt. 14. Being arrested for a 100*l.* or more of just debt, shall, after such arrest escape out of prison. (See *Stat. 21 Jac. 1. c. 19. sect. 2.* in page 257—8.) 15. Paying to the petitioning creditor, or delivering to him goods or security for his debt, whereby he shall have more in the pound, than the other creditors. (See *Stat. 5 Geo. 2. c. 30. sect. 24.* in page 279.) 16. Neglecting to make satisfaction for any just debt to the amount of 100*l.* within two months after service of the legal process, for such debt, upon any trader having privilege of parliament. See *Stat. 4 Geo. 3. c. 33. sect. 1* in page 303.

By this a man withdraws himself from the jurisdiction and coercion of the law, with intent to defraud his creditors. 2 *Vern. 162.* 1. To depart the realm.

A merchant departs the realm to merchandize, and becomes indebted, and to avoid arrests defers his return; this doth *tantamount* to a departing of the realm. *Read. Stat. law 186.*

A *capias de excommunicato capiendo* is awarded against one, who, for fear of arrest, departs the realm, he is no bankrupt. *Com. Dig. 523.*

In the case of one *Woodier*, a mercer on *Ludgate-hill*, against whom his going beyond sea being given in evidence, it was insisted that shewing *quo animo* it was done, (*viz.* on account of having killed his wife) it could

not be construed an act of bankruptcy; but it appearing that his creditors were thereby in fact prevented from recovering their debts, chief justice *Reeves* held it was; but if that fact had not come out, it would have been otherwise, cited by Sir *John Strange* (late master of the rolls) in *Degols v. Ward*, Hil. 12 Geo. 2. B. R. Bur. Rep. 471, 484.

2. To begin to keep his house.

Keeping in his own house, privately, so as not to be seen or spoken with by his creditors, except for just and necessary cause, is likewise construed to be an intention to defraud his creditors by avoiding the process of the law. 2 *Black. Com.* 478.

If a tradesman conceals himself, or absconds within his house, with design to delay or defraud his creditors, it makes him bankrupt, though the concealment be only for little time, or he be sued only as surety for another. *Palm.* 325. 2 *Show. Rep.* 523.

Keeping house to avoid an attachment for not delivering of Goods, *no debt being due*, is not an act of bankruptcy, but otherwise for fear of an attachment in *Chancery*. *Atk. Rep.* 196, 240.

If a man denies himself when he knows that a creditor comes for his debt, he will be a bankrupt. *Com. Dig.* 523.

If a trader, upon notice of process issued forth against him, keeps his house to secure himself from the arrest, and after goeth forth again, and then, upon like notice, keeps his house, and then again goeth forth, this bringeth him not within the statutes of bankruptcy, because he uses to go at large, and his policy will not always prevent the serving of process on him, for he may be met withal unwittingly one time or other. *Cro. Eliz.* 13.

3. To absent himself.

If a man has no constant dwelling, if he absents himself from his usual abode, he shall be adjudged bankrupt. *Com. Dig.* 523.

A merchant indebted departs the realm to merchandize, and having loss by tempest returns no more, this is not a departing, but an absenting himself. *Stone* 123, 124.

4. To take sanctuary.

Taking sanctuary is when a person takes refuge in any place in which the law cannot be so readily executed upon him, and to delay the payment of his debts to his creditors, viz. within the verge of the court, or any other particular place of refuge: but it seems that where a person hath lived and resided within the verge of the court for many years, that such residence cannot be deemed an act of bankruptcy, notwithstanding a person so resident has been declared bankrupt, and the commission has even appeared in the *Gazette*; but *minus juste*. *Green* 45.

5. To suffer himself willingly to be arrested for any debt, or other thing, not grown or due for money delivered, wares sold, &c.

Suffering himself to be arrested, without just and lawful cause, is likewise deemed an attempt to defraud his creditors; and therefore, if he becomes a prisoner in the *Fleet* or *Marshalsea*, he will be a bankrupt. Or if he cause a voluntary, or feigned action to be commenced against him. So, where the party procures himself to be arrested upon a *Sham debt*, that by the statute of *Elizabeth*, is immediately an act of bankruptcy. *Green* 46.

But

But an outlawry in *Ireland* does not make one bankrupt, nor an outlawry here, unless it be with intent to defraud creditors, *as it seemeth*, or, if it be reversed before the commission issues; or, reversed, for default of proclamations after the commission. *Green 47.*

This is to be intended a voluntary yielding, and not when a man is imprisoned for non-payment of a fine, or any refractory carriage; for although the act which causeth the imprisonment be voluntary, yet the imprisonment itself is involuntary. *Green 47. Billingsb. 95. Good. 25.*

*B.* was arrested for twenty-eight pounds, and though he had money sufficient to pay the debt, yet chose rather to go to prison, in order as he declared, to force his creditors to come to a composition; and by lord chancellor *Talbot* this is an act of bankruptcy, within 1 *Jac.* though without such intent yielding himself to prison was no act of bankruptcy, unless he lay there two months. *7 Vin. Abr. 61, 62.*

Being denied to a creditor is only evidence of an act of bankruptcy, absconding is the material part of it. *Green 48.* Lord *Mansfield* said; if a trader leaves his house, circumstances may shew it was not to abscond.

This was an action against the defendant for a false return to two *feri facias*'s, and on evidence the case appeared to be thus, viz. The plaintiff sent into *Essex* a writ on mesne process, and a *feri facias* against one *Ward*, and both writs were delivered to the sheriff, and *Ward* was arrested by virtue of the writ; about two hours before the sheriff took his goods in execution by means of the *feri facias*; soon after that arrest, and before his goods were taken in execution, he was carried to *Colchester* to the officers house, and desired the officers that they would not let any one know that he was there; and on being told the next day, which was *Sunday*, that *Finch*, one of his creditors asked after him, he prayed, for God's sake, dont let him know that I am at your house; and upon *Finch*'s coming the next day to enquire after him, he then desired of the officers, that *Finch* might be permitted to see him. In about a week after, the second *feri facias* was executed on his goods; but the sheriff, supposing that he became bankrupt from the first arrest on the mesne process, delivered the effects to the assignees of the commission of bankruptcy taken out against *Ward*, and returned *nulla bona* to both the writs of *feri facias*. Upon hearing the evidence, *Eyre* chief justice of the *Common pleas*, ordered the act of king *Ja. 1. c. 15. sect. 1, 2.* which describes a bankrupt, to be read, and then said, that between the time of executing the two writs of *feri facias*, he had been guilty of an act of bankruptcy, for that he had withdrawn himself from the place of his habitation, and had absented; but serjeant *Darnell* saying, that that must be done with a design to defraud his creditors, the chief justice told him his very absenting himself was sufficient evidence of the fraud designed. Then serjeant *Eyre* said, it must be a voluntary absenting of himself, and not by means of an arrest: and the chief justice said, so it was here, for that it appeared on evidence, (as indeed it did) that on the *Monday* after the arrest, he was discharged out of custody on the writ of mesne process, and from that time he secretly withdrew. Therefore the chief justice told the jury, that as here appeared not to be any act of

6. To suffer himself to be outlawed.  
7. To yield himself to prison.  
8. To depart from his dwelling house, to the intent or purpose to defraud or hinder a just creditor, &c. *Green 48—50. Philips and Peck v. Sheriff of Essex, at the sittings in C. P. in London, after term, before Eyre Ch. J.*

bankruptcy committed by *Ward* till after the time of the first execution, upon that return they must find for the plaintiff, and that since he had between the time of the two executions so behaved himself as to make himself bankrupt, by which the interest in his goods was vested in the assignees; they ought on the said return to find for the defendant; which they did accordingly.

2 Stran. 809.  
Trin. 2 Geo.  
2. Malyn et  
al' v. Eyloe,  
at Guildhall  
before Raym.  
Ch. J.

On 28th of *November* *Hall* rode out of town, and returned in the evening, before which a bailiff had been at his shop to arrest him: the next morning he sent for the bailiff, and told him he went out in order to get the term of the plaintiff, and now the return of the writ was out, if they would take out a new writ he would give bail, which was done accordingly. And this was held to be an act of bankruptcy within 1 Jac. 1. c. 15. s. 2. which speaks of "departing from his house with intent, and whereby his creditors may be defeated or delayed from recovering their just debts."

Atk. Rep.  
196.

Lord chief justice *Willes* was of opinion, that a person's absconding to avoid an attachment upon an award for non-delivery of goods pursuant to an award, was not an act of bankruptcy, because it was not within the words of the statute of 1 Jac. 1. c. 15. s. 2. which makes it an act of bankruptcy in a person to depart from his dwelling-house, in order to avoid the payment of a just and true debt only, and not the delivery of goods, for that is a duty only; and lord chancellor *Hardwicke* declared that he thought the determination of lord chief justice *Willes* a very right one, and that he was very well warranted by the words of the statute, in the distinction he made between *absconding* to avoid a debt, and *absconding* to avoid a duty only.

9. Willingly  
or fraudulent-  
ly to procure  
himself to be  
arrested, or his  
goods, money,  
to be attached,  
&c.

Suffering this to be done by any legal process, is another plain and direct endeavour to disappoint his creditors of their security. 2 Black. Com. 478.

10. To make  
any fraudulent  
conveyance of  
his lands, te-  
nements, &c.

But he is not a bankrupt if his goods are attached, or sequestered without his procurement; as upon an attachment out of a court for his default, or laches; so, if *A.* has a rectory impropriate, and the tithes are sequestered for not repairing the chancel. Com. Dig. 523.

And therefore, if he makes a grant or conveyance fraudulent within stat. 13 El. c. 5. or stat. 27 El. c. 4. it makes him bankrupt, and if he makes a fraudulent grant, &c. he will be bankrupt, though he afterwards appears publickly upon the Exchange, &c. Green 52.

Making such a grant, &c. to a friend, or secret trustee, of his tenements or goods, is an act of the same suspicious nature as the last. 2 Black. Com. 478.

A conveyance by a trader of his whole substance, to a particular creditor, himself continuing in possession, and acting as visible owner, though the conveyance be made by way of security, and for valuable consideration, is fraudulent and a specific act of bankruptcy within the above clause. By lord *Mansfield*. Bur. Rep. 484, 829.

If a bankrupt convey all to a favourite and friendly creditor, just before committing an act of bankruptcy, the whole power of selling his effects,

effects, calling in his debts, and settling his accounts, must be in such single and particular creditor; he must have a right even to the custody of the books and papers; whereby the worst and most dangerous priority would prevail, depending merely upon the unjust or corrupt partiality of the bankrupt. By lord *Mansfield*. *Bur. Rep.* 477.

Such preference is a fraud upon the whole bankrupt law, and would defeat the two main objects it has in view; to wit, the management of the bankrupt's estate, and an equal distribution among his creditors. By lord *Mansfield*. 4 *Bur. Rep.* 476, 484, 829.

A case happened, where a conveyance calculated to postpone one creditor to the rest was held an act of bankruptcy. It came on before lord *Hardwicke* the late lord chancellor at *Lincoln's Inn Hall*, 31st July 1755. One *Gayner*, a trader, had made an assignment, on the 7th of June 1755, of all his effects, goods, stock in trade, and book debts, (except household goods, watches, plate, bills of exchange, inland bills, promissory notes, and cash then by him) to trustees, in trust to pay themselves and all the rest of his creditors, except *Ford* the petitioner. But the trustees declined to act under this assignment. He executed another on the 9th of June 1755; wherein the trustees were to pay themselves, and all the creditors mentioned in a schedule; (in which schedule the petitioner was not included :) and in this second assignment, a large parcel of ginger, as well as the things above-mentioned, were excepted. The petitioner insisted that he alone could choose assignees; since the other creditors claimed under the assignment. Lord *Hardwicke* was clear, "that the executing the deed on the 9th of June was an act of bankruptcy." And all that heard his determination were of the same opinion: and every body concerned acquiesced in it. Whereupon the creditors mentioned in the schedule, consented to wave all benefit or advantage under the assignment; and all proved their debts, in order to receive an equal dividend with the petitioner: and the creditors proceeded to a choice of new assignees. The framers of this deed executed by *Gayner*, took for granted, "that if it had been a conveyance of all his effects, it must be bad;" and therefore they colourably excepted parts. But the contrivance did not prevail, even so far as to bear an argument; or to be thought by any body worthy of a trial. There is a great difference between the conveyance of all, and of a part; a conveyance of a part may be public, fair and honest; as a trader may sell, so he may openly transfer many kinds of property, by way of security. But a conveyance of all must either be fraudulently kept secret, or produce an immediate absolute bankruptcy. It has been argued, "that after a resolution taken by a trader, to commit an act of bankruptcy, the trader so resolving to become bankrupt, might lawfully prefer a just creditor by conveying part of his effects, to satisfy that creditor's debt. It is not necessary to determine that question in this cause; for here the conveyance is of all. And therefore lord *Mansfield* would only say, that no such proposition was yet established; much less, in the extent whereto it had been urged; but he (*Bur. Rep.* 484, 831.) said afterwards, that a trader might pay a particular creditor, or he might mortgage

gage



gage a part of his estate or effects (at least) to a particular creditor, provided he delivered possession at the same time.

Bur. Rep.  
827.

*L.* a trader, being really indebted to *W.* (in about 18,408 *l.*) sent for *W.* and told him; "he could not stand his ground," and proposed to secure him. Accordingly, he executed a general assignment to *W.* of every thing that he had in the world: but after payment of *W.*'s debts, it was to be in trust for *L.* himself, as to the residue. A defeazance in a separate deed was soon after executed, making the assignment void, upon payment of all the money due to *W.* (who had been concerned with *L.* in circulating notes, many of which were outstanding :) But neither the assignment nor defeazance particularly liquidated how much money was due from *L.* to *W.* The deed of assignment recited *L.*'s being "obliged, upon urgent and necessary business, to leave *London*;" and that he could not raise money soon enough to answer all the demands that *W.* had upon him." There was no counter-part of this deed: And the original remained in the keeping of *L.* the assignor. No possession was delivered: only *L.* gave a letter of attorney to *B.* his own clerk, (a person privy to the whole,) to collect, receive, dispose, &c. the goods still continuing in *L.*'s house. No notice was given to *L.*'s debtors. It was resolved by the court of *King's Bench*, that this deed alone was itself an act of bankruptcy.

11. Obtaining any protection, otherwise than being lawfully protected by privilege of Parliament.

Procuring any protection, not being himself privileged by parliament, in order to screen his person from arrests, is also an endeavour to elude the justice of the law. 2 *Black. Com.* 478.

But if any one be protected as the king's servant, it does not make him bankrupt. *Skin.* 21.

12. Preferring petitions to compel creditor to accept less than his debt, &c.

Traders in the service of ambassadors are not privileged. See page 264. These are an acknowledgment either of his poverty or his knavery. 2 *Black. Com.* 478. If the creditors, upon request, enlarge the time for payment, it does not make the party bankrupt. *Com. Dig.* 524. But these sort of petitions or bills will not now lie. *Lex mercat. rediviv.* 489.

13. Being arrested for debt shall, after his arrest, lie in prison two months upon that or any other arrestor detention.

The inability to find bail, in order to obtain his liberty, argues a strong deficiency in his credit, owing either to his suspected poverty, or ill character; and his neglect to do it, if able, can arise only from a fraudulent intention; in either of which cases it is high time for his creditors to look to themselves, and compel a distribution of his effects. 2 *Bur. Rep.* 819. 2 *Black. Com.* 478, 479.

14. Being arrested for 100*l.* or more of just debt, shall, after such arrest, escape out of prison:

No man would break prison, that was able and desirous to procure bail; which brings it within the reason of the last case. 2 *Black. Com.* 479.

Lord *Mansfield* held, that a person being permitted, at his own desire, to go out of the county, in which he was arrested, was not such an escape, as that he should be thereby rendered a bankrupt and a criminal; for the act clearly intended such an escape made by a prisoner, as shewed that he meant to

to run away, and thereby defeat his creditors; but that this was not such an escape, and that certainly a man should not be made a criminal, where he had not the least criminal intention to disobey any law whatsoever. That it was no escape at all in the sense of the act of parliament; he remained substantially in custody notwithstanding his being carried into another county. *Bur. Rep.* 339.

See page 279. *sect.* 24.

See *Stat.* 4 *Geo.* 3. c. 33. *sect.* 1. in page 303.

For more learning on this subject, see a general system of the laws concerning bankrupts, and *Green's* Spirit of the bankrupt laws.

15. Paying,  
£c.

16. Neglect-  
ing, &c.

## Banks.

**B**ANK (banc, *Sax.*) is the earth rising on each side of a water, or river; or any heap of earth piled up. *Johns.*

*Stat.* 22 *Hen.* 8. c. 11. [*A. D.* 1530. intituled.] "An act concerning *Powdike* in marsh-land."

"Wherefore this time divers evil-disposed persons, of their perverse and evil dispositions, maliciously, at divers and sundry times have cut, cast down, and broken up divers parts of the dike called the new powdike in marsh-land in the county of *Norfolk*, and the broken dike, otherwise called *Oldfield* dike, by marsh-land in the isle of *Ely* in the county of *Cambridge*; by reason whereof, as well by the great abundance of salt water, as also by the course of the fresh water entring and coming into and by the said parts of the said ditches so broken and cast down, the ground and pastures within the country of marsh-land in the counties aforesaid, have been divers and many times drowned and surrounded with the waters aforesaid, so that no profit thereof might be taken by the owners and occupiers of the said ground and pastures within marsh-land aforesaid; by the drowning whereof the said owners and occupiers of the said ground, and the inhabitants within said marsh-land, and the level of the same, at many and sundry times have been not only put to importunate charges and expences, to their extreme damages and costs, but also, to their great undoing, have lost much of their cattle and beasts, then being and pasturing upon and within marsh-land aforesaid, to their great damage and loss, and to the great decay of the common weal of the countries adjoining to the same; and also by reason of the same waters much people have been drowned in their beds within their houses, and have lost the most part of their goods being within the same: (2) For the reformation whereof Be it ordained, enacted, and established by the king our sovereign lord, by the assent of the lords spiritual and temporal, and the commons, in this present parliament of dikes in marsh-land is felony.

2 & 3 Ph. &  
M. c. 12.

Cutting down  
or breaking up  
of dikes in  
marsh-land is  
felony.

Justices of the  
peace to in-  
quire of offen-  
ders, and a-  
ward process,  
&c.

ament assembled, and by the authority of the same, That every such perverse and malicious cutting down and breaking up of any part or parts of the said dikes, or of any other bank, being parcel of the rind and uppermost part of the said country of marsh-land aforesaid, made for the defence and salvation of the same country of marsh-land, at every time and times from henceforth by any person or persons committed and done, otherwise than in working upon the said banks or dikes, for the repairing, fortifying and mending of the same, be taken, reputed, and adjudged felony; and that the offenders and doers of the same, and every of them, be adjudged and reputed felons. (3) And that the justices of the peace of the said counties of *Norfolk* and *Cambridge*, within the said isle, at every of their sessions within the same isle and counties to be kept, by the authority aforesaid have full power to cause inquiry to be made of every such offence, so at any time, in form aforesaid, hereafter to be committed and done, and to award like process against every of the said offenders, with like judgment and execution of the same, if they or any of them be thereof found guilty by verdict or otherwise, as the said justice hath used and accustomed to do upon other felonies, being felony at the common law."

**Stat.** 10 *Geo.* 2. c. 52. [*A. D.* 1737.] *made, among others purposes,* "For the more effectual punishment of persons removing any materials used for securing marsh or sea walls or banks."

Piles, chalk,  
&c. used for  
the security of  
marshes, not  
to be removed.

**Sec. 5.** "And whereas it frequently happens, that many idle and disorderly persons employed in fishing-boats and others, residing near the sea-coasts, do unlawfully and maliciously cut off, draw up, burn, and destroy the piles, which are drove into the marsh, or sea walls and banks, whereby the chalk and other materials used for securing the said walls and banks fall away, and oftentimes take away the said chalk and other materials used for that purpose, and thereby frequent inundations happen to the lands lying within the said walls and banks, to the great loss and damage of the owners and occupiers of the said lands: For remedy thereof, be it therefore further enacted by the authority aforesaid, That if any person or persons shall at any time or times hereafter unlawfully cut off, draw up, or remove and carry away any piles, chalk, or other materials, which are, or at any time hereafter shall be driven into the ground and used for the securing any marsh, or sea walls, or banks, in order to prevent the lands lying within the same from being overflowed and damaged, it shall and may be lawful to and for any one or more of his majesty's justices of the peace residing near the place where the said offence or offences shall be committed, and such justice or justices is and are hereby respectively authorized and required, upon complaint or information upon oath of such offence (which oath or oaths such justice or justices is and are hereby empowered to administer) to summon the party or parties so complained of, or to issue his or their warrant or warrants to apprehend and bring before him or them the person or persons so accused, complained of, or suspected; and upon his, her, or

or their appearance, or neglect to appear, to proceed to examine the matter of fact with which he, she, or they are charged, and upon due proof thereof made, either by confession of the party or parties so accused, or upon the oath or oaths of one or more credible witnesses or witnesses, to determine the same, and to convict the offender or offenders; and every person offending herein, and being thereof convicted as aforesaid, shall forfeit and pay the sum of twenty pounds, one moiety thereof to the informer, and the other moiety to the overseer of and for the use of the poor of the parish wherein such offence shall be committed; the same to be levied by distress and sale of the offender's goods and chattels, together with the charges of such distress and sale, rendering the overplus (if any be) to the owner or owners thereof; and for want of sufficient distress the said justice or justices are hereby required to commit the person or persons convicted as aforesaid to the house of correction, there to remain and be kept at hard labour for the space of six months."

on forfeiture  
of 20l. to be  
levied by dis-  
tress,

or imprison-  
ment for six  
months;

**Stat. 4 Geo. 3. c. 12.** *Made, among other purposes,* "for punishing persons who shall damage or destroy any banks, floodgates, sluices, or other works belonging to the rivers and streams made navigable by act of parliament."

**Stat. 5.** "And whereas the laws now in being are not sufficient for the preservation of the banks, flood-gates, sluices, and other works, belonging to rivers and streams made navigable by act of parliament, and the maintaining the navigation of such rivers and streams; be it therefore enacted by the authority aforesaid, That from and after the passing of this act, if any person or persons shall wilfully or maliciously break, throw down, damage or destroy any banks, flood-gates, sluices, or other works, or open or draw up any flood-gate or flood-gates, or do any other wilful hurt or mischief to any such navigation, so as to obstruct, hinder, or prevent, the carrying on, completing, supporting, or maintaining such navigation; every such person or persons shall be adjudged guilty of felony; and the court before whom such person or persons shall be tried and convicted, shall and hereby have power and authority to order such person or persons to be transported for seven years."

Persons who  
shall damage  
any banks,  
flood gates, or  
other works  
belonging  
to rivers, &c.  
made navi-  
gable by act  
of parliament,  
shall be ad-  
judged guilty  
of felony, and  
be transported  
for 7 years.

See *Stat. 6 Geo. 2. c. 27.* under title **Black Act.** And see **Navigation, Rivers.**

## Barratry.

**A** Barrator, or barretor, is derived by some, says lord *Coke*, from the *French* word *barrateur*, which signifies a *deceiver*; others derive this word, from the *Latin* word *baratro*, which signifieth a vile knave, or unthrifty person; others, because barrators maintain pleas at *bars* in courts, or stir causes of suits, derive this word from two legal words, namely, *barra*, which signifies the *bar* in courts, where causes are debated, &c. and *rettum*, which, as appears in the writ *de homine replegiando*, in the *Register*, signifies a crime or offence; and because a common barrator is principally an offender in moving or maintaining of quarrels at bars, *viz.* in courts, or in the country, which are causes of suits in courts, he is called a barrator, or bar offender. 8 *Co. Rep.* 37.

A barrator, or barretor, is a common mover and exciter or maintainer of suits, quarrels, or parties either in courts or elsewhere in the country; in courts, as in courts of record, or not of record, as in the county, hundred, or other inferior courts in the country, in three manners; 1st, In the disturbance of the peace; 2dly, in taking or keeping possessions of lands in controversy, not only by force, but also by subtlety and deceit, and most commonly in suppression of truth and right; 3dly, by false inventions, and sowing of calumniations, rumours and reports, whereby discord and disquiet may grow between neighbours. *Co. Lit.* 368. *a. b.*

As this offence consists in all kinds of disturbances of the peace, and the spreading of false rumours and calumnies, whereby discord and disquiet may grow among neighbours, it is not material whether the suits commenced be in a court of record or not, or whether those quarrels relate to a disputed title of possessions or not. *Co. Lit.* 368. *a. b.* 8 *Co.* 36. *b.* 1 *Hawk. P. C.* 243. 3 *Inst.* 175.

But if a man prosecutes an infinite number of suits, which are his own proper suits against others, yet he shall not be a barretor by this; for if they are false and groundless, the defendants shall have costs against him. 1 *Rol. Abr.* 335. But by 1 *Hawk. P. C.* 243. if such suits are merely groundless, and brought only with a design to oppress the defendants, such a man may as properly be called a barrator, as if he had stirred up others to bring them. See 3 *Mod.* 98. 8 *Co.* 36. *b.*

An attorney cannot be deemed a barrator in respect of his maintaining another in a groundless action, to the commencing whereof he was no way privy. 1 *Hawk. P. C.* 243.

Also it seems clear, that no man can be a barrator in respect to one act only; for every indictment for such crime must charge the defendant with being a common barrator. 1 *Hawk. P. C.* 243.

A feme covert cannot be indicted as a common barrator. 2 *Rol. Abr.* 39. But this opinion Mr. serjeant *Hawkins* says is justly questionable; for since a feme covert is capable of exciting quarrels, (in the frequent re-  
petition

petition whereof the notion of barratry seems to consist) as if she were sole, why should she not as properly be indictable for it? 1 *Hawk. P. C.* 243.

By the statute 34 *Ed. 3. c. 1.* [*A. D.* 1357.] it is enacted, "That in every county shall be assigned for the keeping of the peace one lord, and with him three or four of the most worthy of the county, &c. and that they shall have power to restrain offenders, rioters, and all other barrators, and to pursue, arrest, take and chastise them, according to their trespass or offence; and so cause them to be imprisoned and duly punished according to the law and customs of the realm, and according to that which to them shall seem best to do by their discretions and good advisement, &c." How offenders are to be proceeded against.

It seemeth from these words, that justices of peace (as such) have cognizance of barratry without any other commission; but quære; for the contrary opinion, says Mr. serjeant *Hawkins*, seems to have been holden in *Rolle's Reports.* 1 *Hawk. P. C.* 244. But Mr. serjeant *Hawkins* says in another place, namely, 2 *Hawk. P. C.* 40. that justices of the peace in sessions, by virtue of the said statute 34 *Ed. 3. c. 1.* seem to have a jurisdiction over barretors and such like offenders, whether they be mentioned in their commission or not. He cites *Cro. Jac.* 32. *Yelv.* 40. *cont.* 2 *Rol. Rep.* 151.

A justice of peace may arrest any common barretor, and put him in ward till he finds security for his good behaviour for the future, &c. *Keilw.* 41. in *pl.* 6 *per Keble*, and agreed by the court. *Mich.* 7 *H.* 7. *Anon.*

Justices of peace have authority to enquire and hear this offence, without any special commission of oyer and terminer, and their commissions are equal to that purpose. *Cro. Jac.* 32. *pl.* 4. *Trin.* 2 *Jac.* 1. *B. R.* *Barnes v. Constantine.*—*Yelv.* 46. *S. C.* and *S. P.* held accordingly.—*Sid.* 334. *pl.* 20. *Pasch.* 19 *Car.* 2. *B. R.* the same point admitted in the case of the *King v. Browne.*—2 *Keb.* 212. *pl.* 49. and 226. *pl.* 81. *S. C.* and *S. P.* admitted.

It seems clear, that no general indictment of this kind, charging the defendant with being an oppressor and disturber of the peace, and stirrer up of strife among neighbours, is good, without adding the words *common barrator*, which is a term of art appropriated by the law to this purpose. 1 *Hawk. P. C.* 244. Also it seemeth to be certain, that an indictment of barratry concluding *cont' formam statuti* is good, though no statute be made directly against it, but only for the punishment of it, supposing it an offence at common law. 1 *Hawk. P. C.* 244.

Also it hath been holden that an indictment of this kind may be good, without alledging the offence at any certain place; because from the nature of the thing, consisting in the repetition of several acts, it must be intended to have happened in several places; for which cause it is said that a trial ought to be by a jury from the body of the county. 1 *Hawk. P. C.* 244. But it hath been resolved, that such an indictment is not good, without concluding *against the peace*; for this is an essential part of it. 1 *Hawk. P. C.* 244.

Also it seemeth to be the settled practice at this day, not to suffer the prosecutor to go on in the trial of an indictment of this kind, without giving the defendant a note of the particular matters which he intends

How pu-  
nished.

to prove against him; for otherwise it will be impossible to prepare a defence against so general and uncertain a charge, which may be proved by such a multiplicity of different instances. 1 *Hawk. P. C.* 244.

If they are common persons, the usual punishment is by fine and imprisonment, and also by binding them to their good behaviour; but if they are of any profession relating to the law, they may be farther punished by being disabled to practice for the future. 1 *Hawk.* 244.

An attorney, upon barratry being proved against him by divers affidavits read in court, had judgment to be put out of the roll of attornies, and be fined 50*l.* and turned over the bar, and stand committed. *Styl.* 483. *Trin.* 1655. *B. R.* *Alwin's case.*

*H.* was indicted at the sessions, and judgment was there given against him, that he was a *promoter of suits, and a common oppressor of his neighbours*; and was fined 200*l.* The justices all agreed that the indictment was not good without the word *barretor*, and their great reason was because all the precedents are so, and therefore the judgment was reversed; but they said that the finding him to be a common oppressor of his neighbours, had been good evidence to find him guilty of barratry; and therefore they bound *H.* to his good behaviour, and willed that the country indict him again with the word *barretor*. *Sid.* 282. *pl.* 13. *Pasch.* 18 *Car.* 2. *B. R.* *The King v. Hardwicke.*

## Bastard.

**B**ASTARD is one that is born of any woman not married; so that his father is not known by order of law, and therefore he is reputed *filius populi*, the child of the people. *Termes de la ley.* Sir Henry Spelman derives *bastard* from the *Norman bas*, base, and *Saxon steort*, rise or original; as a person of a base and vile birth. *Spelm. Gloss.* We term all persons, says lord *Coke*, by the name of *bastard*, who are born out of lawful marriage. *Co. Lit.* 244.

All well-regulated governments have laid down and settled certain rules of propagation, as necessary to the very being of human society. Hence the solemnity of marriage was established, not only as it prevents lewdness, but as a regulation, without which there would be no distinction of families, and consequently no encouragement for industry, or foundation for acquiring riches; the children therefore that are born in these societies, and are to enjoy privileges by the laws, must be such as are born according to their rules of copulation; for it is absurd that the laws should give sanction and privilege to things done contrary to the law, since that would take away the distinction of right and wrong, lawful and unlawful; and therefore bastards by our law lie under several disabilities. 1 *Bac. Abr.* 309. He is *quasi nullius filius*, and can be heir to no man. *Doct. & Stud. Dial.*

*Dial.* 1. c. 7. But though he cannot inherit any ancestor, yet when he hath gotten a name of reputation, he may purchase by it; for all surnames were originally acquired by reputation. *Co. Lit.* 3. b.

In ancient days bastardy was so disgraceful, that to retain a bastard in a man's house was a reflection, and the stain and reproach of the parents crime dwelt always upon the issue; so that he could not be admitted to a feudal service; and therefore when the bishops requested that our law should be changed in the particular of bastard *eignes*, (that is, bastards born before the marriage of their parents) the barons and earls answered with one voice *that they would not change the laws of the realm*; as appears from the following statute:

**Stat. Merton,** 20 *Hen.* 3. c. 9. [*A. D.* 1235. intituled] "He is a bastard that is born before the marriage of his parents."

"To the king's writ of bastardy, whether one being born before ma-  
trimony may inherit in like manner as he that is born after matrimony,  
all the bishops answered, That they would not, nor could not, answer to  
it; because it was directly against the common order of the church.  
(2) And all the bishops instanted the lords, that they would consent, that  
all such as were born afore matrimony should be legitimate, as well as  
they that be born within matrimony, as to the succession of inheritance,  
forasmuch as the church accepteth such for legitimate. And all the  
earls and barons with one voice answered, that they would not change the  
laws of the realm, which hitherto have been used and approved."

*Fitz. Bastardy,*  
21, 22, 25, 27,  
28, 30, 33.  
1 H. 6. 3.  
11 H. 4. 84.  
39 Ed. 3. 14.  
44 Ed. 3. 12.  
12 Co. 72.

2 Inst 96.

All persons born out of lawful matrimony are bastards by the common law, but by the civil law, those that are born before marriage are legitimated by a subsequent marriage; for by the civil law, all persons adopted into a man's family, were inheritable; and the canonists have allowed of this notion, because the subsequent marriage, they say, takes away the preceding guilt, and shews a consent from the beginning. This difference between the civil law may likewise be ascribed to the power which the father, by the *Roman* law, had over his children, because he was the author of their being, and had the care of their education; if therefore a child should not be legitimated by a subsequent marriage, the parent, would not have had him under his power; nor would the child have had the benefit of the parent's education; which would have cut a member from the commonwealth. 1 *Bac. Abr.* 310. cites 47 *Ed.* 3. 14. b. 11 *H.* 4. 81. *Bract. lib.* 5. fo. 416. 1 *Rol. Abr.* 624.

Who shall  
be deemed  
bastards.

All persons born within marriage are legitimate, unless there is an apparent impossibility that they should be generated by the husband; for there is the strongest presumption that can be, that they are legitimate, because the husband hath the power and dominion over his wife; and therefore may by the law keep her by force within the bounds of duty; to which the canonists have added a fanciful reason, to wit, the husband, having the ownership of his wife, hath the property of the fruit of her body, though planted by another; *quicumque semen apposuit marito acquiritur, quia est domi-*

*nus*



*mus ventris*. Now the presumption thus being, that it is the husband's child, it must be destroyed by contrary proof; and this negative, that it is not the husband's child, must be destroyed by contrary proof; and this negative, that it is not the husband's child, is capable of no other proof than this only, that it must be shewn impossible it should be the husband's child; if therefore the husband be proved castrated, the issue are bastards. 1 *Bac. Abr.* 310. 1 *Rol. Abr.* 358.

If the husband be under the age of 14, the issue are bastards; for before the age of puberty, generation is naturally impossible. *Co. Lit.* 244. 1 *Rol. Abr.* 359.

Where access is presumed, yet evidence may be given of the impossibility of begetting children. 2 *Stra.* 940. *Mich.* 6 *Gen.* 2. *Ex dimiss.* *Lomax v. Holmden et al.*

In ejectment the question on a trial at bar was, whether the lessor was son and heir of *Caleb Lomax*, Esq; deceased, which depended on the question of his mother's marriage. And that being fully proved, and evidence given of the husband's being frequently at *London*, where the mother lived, so that access must be presumed; the defendant was admitted to give evidence of his inability from a bad habit of body. But their evidence not going to an impossibility, but an improbability only; that was not thought sufficient, and there was a verdict for the plaintiff.

If the husband be not within the four seas, during the time that passes between the conception and birth of the child, it is a bastard. This was settled when the king's dominions extended to the four seas only; for to pass and repass in the king's dominions was possible, without any knowledge or proof; but to pass out of another's dominions into the king's, without some knowledge or proof of the matter, was supposed by the law not possible; for there is no such passage in a realm well governed without examination. 1 *Rol. Abr.* 358. *Co. Lit.* 244. *Braet.* 239. If the husband be in *Ireland*, during the time the wife goes with child, the issue is no bastard, because the husband was within the king's dominions. 1 *Rol. Abr.* 358.

Order to charge a man to be the father of a bastard begotten on a married woman quashed, because it doth not say that her husband was beyond sea forty weeks. *Carth.* 469. *Mich.* 10 *Wil.* 3. *B. R.* The *King v. Albert Alverston*. *Lord Raym.* 395, 396. *S. C.*

By an order of two justices, &c. of *Middlesex*, the defendant being adjudged the reputed father of a bastard child, was thereby charged to maintain him; which order was special, to wit, it recited that *Mary Spence*, the wife of *Jonathan Spence* mariner, was delivered of a male bastard child, and that it appeared to them upon oath of, &c. that *Jonathan Spence* her husband was in the king's service at *Cadiz* in *Spain*, and not within the king of *England's* dominions, at the time when the said child was begotten or born; which order was confirmed upon an appeal. And now it was moved to quash both the said orders; first because the *Stat.* 18 *Eliz.* concerning bastard children doth not extend to this case, for the justices have no jurisdiction, but where the child was born out of lawful matrimony. If this woman had been delivered alone of a child without crying out for help, it is certain this would not have been felony within the *Stat.* 21 *Jac.* 1. c. 27. though no proof could be made that the child was born dead. 2dly, It is impossible there should be a reputed father when there is a known father of whom the law takes notice; and though this child may be a bastard in regard to any right of inheritance, yet that is not sufficient to bring it within the conuance of the justices of the peace by virtue of this statute. 3dly, The

The third exception was to the form of the order, *viz.* for that it is not alledged therein, that the husband was beyond sea, for the space of *forty* weeks before the birth of the child, and it is not sufficient to say, that he was beyond sea at the time of the *conception*, because *that* is what in nature cannot *certainly* be known. And for this last reason only, these orders were quashed; but the court bound the defendant by recognizance to appear at the next quarter-sessions for *Middlesex*, being inclinable to bring the case within the intent of the *Statute 18 Eliz.* because of the frequent mischiefs of this kind which have happened among seamen's wives.

But in trials of bastardy at this day, if the jury find that the husband had not access, though the husband and wife lived in *England*, the child is a bastard, but this proof must be clear, otherwise access will be presumed in favour of legitimation. 1 *Bac. Abr.* 311.

Upon an issue out of *Chancery* to try, whether the plaintiff was the heir at law of one *Thomas Pendrell*, it was agreed, that the plaintiff's father and mother were married, and cohabited for some months: That they parted, she staying in *London*, and he going into *Staffordshire*; that at the end of three years the plaintiff was born. And there being some doubt upon the evidence, whether the husband had not been in *London* within the last year, it was sent to be tried. And the plaintiff rested at first upon the presumption of law in favour of legitimacy, which was encountered by strong evidence of no access. And it was agreed by court and counsel on the trial at *Guildhall* before lord chief justice *Raymond*, that the old doctrine of being within the four seas was not to take place; but the jury were at liberty to consider of the point of access, which they did, and found against the plaintiff. The chief justice allowed the defendant to prove the mother to be a woman of ill fame. *Salk.* 120. *Cro. Jac.* 541. But he would not allow the mother's declarations to be given in evidence, till she had been called, and denied them upon the cross examination.

An order was made upon one *Moor*, as the putative father of two bastards born of the body of *Elizabeth* the wife of *Richard Sharplefs*: in which it is stated, that for seven years before, the husband had no access to her, she having never seen or heard of him all that time, and not knowing whether he was alive or dead; which the justices adjudge to be true, and that *Moor* is the father of them, and order him to provide accordingly. Upon appeal to the sessions, the case is stated with some variation: that in 1728, she was married to *Sharplefs*, then a soldier in *Mullins's* troop, in a barn, by a person not in the habit of a clergyman: that there had been no access for seven years: but it appearing by a certificate from the commissary general's office, 7th *April* 1737, and from the evidence of *Simon Clarkson*, that one *Richard Sharplefs*, who he was told was formerly in *Mullins's* troop, was mustered as a private gentleman in the third troop of horse guards from 25th *June* 1733, to 23d *February* 1736, though *Clarkson* said he could not take upon him to swear that it was the same *Richard Sharplefs* pretended to be married as aforesaid: upon this supposition of the husband's being alive, the sessions were of opinion, the children were not bastards, and reversed the order of the two justices. And now

Though the husband is in *England*, yet if no access can be proved the issue are bastards. 2 *Stran.* 925. *Hil.* 5 *Geo.* 2. *Pendrell v. Pendrell.*

If no access of the husband be adjudged, the issue are bastards. 2 *Stran.* 1076. *Trin.* 10 *G.* 2. *Rex v. The Inhabitants of Bedall in Yorkshire.*

now upon debate (the chief justice absent) the order of sessions was quashed, and the order of the two justices confirmed: for it being stated in both orders, that there was no access, according to the case of *Pendrel v. Pendrel*, Hil. 5 Geo. 2 it was immaterial whether the husband was alive or not; but if it was material, here is no evidence to prove it, the identity not being sworn to; or if it was, yet the evidence of his being alive was improper to have been received, and even the marriage itself doubtful.

The wife may be admitted as an evidence to bastardize her own child, begotten during her marriage; but she shall not give evidence of any other fact relating to it, which can be proved by any other person.  
2 Sess. Ca.  
175. Mich.  
8 Geo. 2.  
The King against Reading.

General order of bastardy; appeal to the next general quarter sessions by the defendant, who make an order and set out, That it appears by the order of bastardy the defendant was adjudged to be the putative father of a child begotten on *M. Almont* wife of *J. Almont* of *Sherburn* in the said county. The said *M. Almont* gave evidence that the said *Thomas Reading* had carnal knowledge of her body in or about August 1732, at *Sherburn* aforesaid, and several times since; and that her husband had no access to her from the month of May 1731, to the time of her examination in that court, being the third of October 1733; and that the said *Thomas Reading* was the father of the said child; of which things she the said *Mary* was the only evidence. And it also appearing to the court, by evidence given before the said court, that the said *J. Almont* the husband was frequently in the county of *Berks*, six or seven miles distant from *Sherburn*, where the said *Mary* at that time inhabited, and that *J. A.* is now living, and that the said *Mary* was married to him before she was begot with child; and this being a cause tried at this *Michaelmas* sessions, it became a question whether the said *Mary* was a competent witness to prove her husband had no access to her, which is submitted to the determination of the judges who last came the *Oxford* circuit. At the next general quarter sessions another order is made, reciting the appeal to the last sessions, and the order of bastardy, and that the judges had declined giving their opinions upon the said facts. And the appeal came on at this sessions to be reheard. It appeared to the court by other evidence, that the said *J. A.* was from the month of June to *Michaelmas* following, or thereabouts, at or near *Southampton*, and that the said *M. A.* was all that time at *Sherburn* aforesaid, whereby it was adjudged that they could not in that time be together so as for the said *J. A.* to be the father of the child; whereupon it appeared to this court, upon the oath of the said other witnesses, and of the said *Mary Almont*, that the said *T. Reading* was the father of the said child; therefore it is ordered by the court, that the said order made by the said two justices of the peace be and is confirmed. These orders being removed into this court, several exceptions were taken thereto; but the material exception, and that upon which the principal question arose was, whether the wife could be admitted as an evidence to bastardize her own children? And it was said to be against the rule of the law, that she should be evidence for or against her husband; and the reason of the law was, that in case she was to be evidence against her husband, as she must be if she could be an evidence for him, it would be the occasion of great strife and contention, and entirely destroy that harmony which ought to subsist between man and wife. That in law they were considered as one flesh, though with two souls, according to my lord *Coke*. That of all things she ought not to be admitted as a witness  
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in this case to bastardize her own child, who perhaps might be intitled unto considerable possessions by descent, which might by this means be taken from him. On shewing cause it was insisted, that the original order of bastardy was right, and that as to the sessions orders which were admitted to be bad, agreed they should be quashed; but then, as they were nought in themselves, insisted that the court ought not to take any notice of any thing in them, as in the case of a bad plea, which if bad, the matter in it was not regarded by the court. Upon the whole it was said, some fault ought to be shewn in the original order, without having any recourse to the matter, which was disclosed by the sessions orders. But the whole court were clear of opinion, that they must regard the special matter stated to them by the sessions, whether the orders were good or not, and held that the wife could be a witness to no other fact in this case but that of incontinence, which she was admitted to be from the necessity of the thing, but not to the absence of her husband, which might properly be proved by other witnesses, and likened it to the case of hue and cry, where the person robbed shall be admitted a witness of the fact of robbery, but not to prove any other matter relating thereto, *viz.* in what hundred the place was, &c. because that may be proved by others. The objection taken to the sessions order arose from this, that the first sessions to which the appeal was made, after having stated the evidence, and that a question arose whether the wife could be a witness in this case, and that they agreed to refer that question to the judge who last went the *Oxford* circuit, without determining any thing, or adjourning the further consideration of the appeal to any further time. Afterwards at the next quarter-sessions, taking notice that the judges had declined giving any opinion, and that they had then reheard the said appeal, they confirm the order of two justices. So that the first sessions determined nothing, nor did they adjourn the appeal to the next, and the next had no authority to take the matter as a new cause; and so it was said in a late case of the justices of *Salop.* An appeal had been made from the poor's rate to the sessions, and it appeared the sessions had adjourned the further consideration of the matter to the next day. But it did not appear that the sessions was at the same time adjourned, and they were forced to get an affidavit that the sessions continued the next day, and they got a new *Certiorari* to return that fact. Upon the whole it was insisted, to make the last sessions order good, that an adjournment should have been made of this appeal. In *Hilary* term following, order of sessions was quashed, because not properly adjourned, as was likewise the order of two justices, by consent of counsel, and defendant entered into recognizance to appear at sessions, and abide such new order, as should be made on him.

In this case, which was an order of bastardy made at the sessions, and specially stated, and which confirmed an order of two justices, which was made *general*, the court held, that where an order of two justices is made *general*, and the sessions confirm that order, and state the matter specially, in case they quash the sessions order, they must likewise quash the order of the two justices, who made an order upon the *same* fact, which is stated in the *Report of the preceding case from a manuscript.* Mich. 8 Geo. 2. King against Read-  
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the sessions order : And that if the sessions quash an order of two justices upon a fact, which is specially set forth ; and afterwards this court should be of opinion that, as the fact was set forth by the sessions, they had no grounds for quashing the original order, they held that in such case, they would quash the sessions order, and revive the original order. They likewise held that a wife can be so far a witness to bastardize the issue begotten on her, during the marriage ; as to give evidence of the criminal conversation between a strange man and her, because of the necessity of the thing ; for that it is generally so secretly carried on, that no one but herself and the man are present : But that she shall not be allowed to give evidence of any other fact whatsoever relating to it ; as that her husband had been absent for so long time, and at such a distance, and the like : For that these things may be proved by *other* persons, as well as by her ; and therefore she shall not be allowed to give evidence of them : And they compared it to the case of the stat. of Hue and Cry, where, for the necessity of the thing, the party is allowed to give evidence of the robbery himself ; but he cannot be a witness as to any other part of the circumstances, upon which the action is founded ; and they compared it likewise to the stat. 3 H. 7. where, on a forcible marriage, the wife shall be allowed an evidence. In this case there was likewise a reference of the special matter to the judge of assize, who refused to do any thing in it, which reference was made the first sessions, in which the appeal was lodged ; and the judge doing nothing in it, the justices of the second quarter-sessions take it up, and make an order on it ; and the question was, whether the justices of peace ought, in this case, to have made an *express* adjournment over of this matter, to the next quarter-sessions ; or whether the referring it to the judge of assize, was not a sufficient continuance of it to the next sessions. The *Chief Justice* (lord Hardwicke) seemed inclined to think, that this referring the matter to the judge of assize, was sufficient ; for that he did not know that it was ever determined that the sessions were obliged to make as regular continuances of their proceedings founded on the statutes, as this court is obliged to do : But he allowed they ought not to do it in the case of indictments, because that was a proceeding on the common law.—Page and Probyn thought the same, but Lee was very doubtful on it, by reason of the words of the stat. 18 Eliz. which are (the next sessions) ; and therefore the court ordered this point to be argued again.

This case coming on again in Hilary term 8 Geo. 2. Mr. Abney took exceptions to the order and the *Certiorari*, there being this variance in them, viz. The order of two justices says, that the bastard was begotten on the body of *Mary Almond* ; and both the orders of sessions call the woman *Almont* ; and the *Certiorari* calls her *Almond* ; and he said that this was a fatal exception ; and cited *Salk.* 472. And in *Trin.* 2 Geo. 2. there was a variance between the orders in the name of the parish, viz. *Redbourn* and *Redbourn*, and that was held to be fatal. Mr. Serjeant Wright said that *Almond* and *Almont* founded alike, to wit, *Almon* ; and that it appeared in *Somner's Saxon Dictionary* that *D.* and *T.* were used for one another ; and cited 1 *Mod.* 107. 1 *Keb.* 105. *Style's Rep.* 390. Mr. Strange cited *Trin.*

*Trin.* 2 G. 2. *Haywood* and *Ullifcal*, where the order was made for the removal of a poor person to the parish of *Ullifcal*, with a double *L*, and the appeal was made by the parish *Ullifcal* with a single *L*, and so was the order of sessions made: and on argument it was held here that this was not such a variance as was to be regarded; and he cited *William* and *Ogle*, *Hil.* 4 *Geo.* 2. on *nul tiel Record* pleaded, *Segrave* and *Seagrave*, was held no material variance. But *Trin.* 4 G. 2. *Wesley* and *Westley* were held to be different, because when you come to spell the word, viz. *Westley* and *Wesley*, they don't sound alike. The court was doubtful upon this exception, and the Ch. Just. said, he thought the case of *Ullifcal* and *Ullifcal* to be a pretty strong one in support of this; but he recommended to the counsel of both sides, that all these orders should be quashed by consent, and that the defendant should be bound in a recognizance here, to appear at the next quarter-sessions in the county: but serjeant *Wright* said he thought that in this case the defendant ought not to be bound over to appear at the sessions; for that the only reason why that was done was, because the defendant shall not be entirely discharged from the maintenance of his bastard, by reason of any orders (which were made on him) being here quashed for want of form: but that this reason does not hold in this case, for that the sessions had stated this man's case specially on the orders, and that after argument, this court had been of opinion that the defendant was wrongly charged, and cited 1 *Ventr.* 59. 2 *Keb.* 604. *Rex* and *Tinham*. *Trin.* 12 G. 1.—The court gave no positive answer to this point, but said only, that in case the counsel of both sides would consent to the quashing all the orders, they thought, they might very well bind over the defendant to appear at the sessions; and then the Ch. Just. said, that the order of the two justices was certainly good, and well removed; and that he thought, both the first and second order of sessions were bad; for tho' the sessions may adjourn over such order to the next sessions, and are not obliged to determine the matter at the first sessions, yet they must do some act at the first importing an adjournment of the matter over to the next sessions, tho' there is no occasion for a formal regular adjournment. But this they have not done here; for at the first sessions, they have referred the matter generally to the next judge of assize, without doing any thing importing an adjournment of the matter over to the next sessions; so that the justices power was at an end, and the appeal was discontinued.—*Page* and *Probyn* said little or nothing to this point, but *Lee* said he was of the same opinion with the Ch. Just. as to this matter of the adjournment. However, all the orders were quashed by consent, and the defendant was bound in a recognizance to appear at the next sessions.

An order of the two justices states; It appears to us by examination of *Dorothy* the wife of the reverend Mr. *Henry Bird*, that she lived separate from her husband from *Michaelmas* 1750, to *February* 1752; and that she has not in all that time seen or been with him, he being a prisoner in *York Castle*: That *John Rooke* had carnal knowledge of her body, on the 30th of *January* 1750, and got her with child of the bastard. Exception was taken, that the wife in this case was an incompetent witness. By *Lee* Ch.

Wife's evidence admitted in an order of bastardy.  
1 Bu Just.  
173. Mich.  
26 Geo 2.  
King and  
J. Rooke.

J. and the court : How far the evidence of the wife is to be admitted upon orders of bastardy, is now settled in the case of *K. and Reading*; where the wife appeared upon the order to be the only witness to charge the putative father : upon this, the order was quashed : and the reason given by the court was, that the wife might be admitted to prove the act of adultery *ex necessitate*, for of that there could be no other evidence ; but not to prove other facts, of which there may be witnesses. This case being similar, must be determined upon the authority of that case. The wife's examination alone does not make the order bad, but the facts to which she is examined. The necessity of the thing excepts her, as to the fact of adultery, out of the general rule ; but not as to the fact of no access, for that may be proved by particular circumstances examinable by the justices below. But upon this order she appears to be the only evidence, and her declarations are not admissible to bastardize her issue. And the order was quashed.

But the evidence of the wife alone is not sufficient to prove no access in the husband, in order to make a settlement for the issue as bastards.

Andr. Rep. 8.  
Trin. 10 & 11  
Geo. 2. The  
King against  
The Inhabitants of Bedell.

An order of bastardy was made by two justices, reciting, That whereas *Elizabeth Sharplefs*, the wife of *Richard Sharplefs*, anno 1733, was delivered of a child in *Bedell*, and that on the examination of the said *Elizabeth*, and on other proof, it appeared, that her said husband for seven years and nine months before that time had not cohabited with her, or had any access to her ; and that the said *Elizabeth* did not know whether he was alive or dead ; and therefore it is adjudged that the said child is a bastard, and that *Christopher Moor* is the father. And upon appeal an order of sessions was made ; which, after reciting the original order, set out, that it appeared farther on the evidence of the said *Elizabeth*, that in 1728, she was married to *Richard Sharplefs* in a barn by persons unknown ; and also that it appeared by the certificate of the commissary general, and the evidence of *E. C.* that one *Richard Sharplefs* was mustered in the guards anno 1733. and continued there from that time until——but the said *E. C.* could not tell whether the said *Richard Sharplefs* was the husband of the said *Elizabeth*. And it not appearing that her husband was dead, therefore the sessions quashed the first order. Motion by Mr. solicitor general *Strange* to quash the order of sessions, and confirm the original order. And it was argued by him and Mr. *Denison*, that if the husband in this case be actually living, it is not material ; for as he had no access to his wife for seven years and nine months, the children born in that time are to be considered as bastards : And they cited the following cases. *Pendrell* and *Pendrell*, *Hill. 5 G. 2.* This was an issue of legitimacy directed out of *Chancery*, and tried before lord chief justice *Raymond* ; and it being proved that the husband had no access to the wife, though he was always in *England*, it was held, that the child was a bastard : and the court of *Chancery* acquiesced in the determination. *Lomax* and *Holden*, *Mic. 6 Geo. 2.* Upon an issue of legitimacy, it was agreed by the court, that if a husband is impotent, though he continues in the house with his wife, the issue may be bastardized. *The inhabitants of St. Andrew* and *St. Bride*, *Hill. 3 Geo. 1.* agreed, upon debate, that if a husband hath no access to his wife, her issue are bastards. It was admitted by Mr. *Nash* and Mr. *Barnardiston* on the other

other side, that the law is now settled as has been mentioned; that the issue of a married woman may be bastardized, though the husband be within the four seas; contrary to the old rule. *Co. Lit.* 244. a. but then (they urged) the evidence ought to be very plain; as particularly that the wife only can be a witness of the act of incontinency. But in the present case her evidence only, that the husband had no access, (which is the sole proof the first order is founded on) is insufficient: and for this defect in that order the sessions might quash it. That this evidence is not sufficient, was held in a case in lord Holt's time, and in the case of *The King and Reading*. The court (*sc.* Page, Probyn, and Chapple, justices) were clearly of opinion, (1) That though the evidence of the wife alone in this case is not quite sufficient, yet the original order is good; it appearing to be made not only on her testimony, but on other proof: and this, it must be intended, was legal evidence. (2) That the sessions order is ill; because the only thing they have proceeded upon, is the life of the husband: and this is not material, as there was no access by the husband to the wife; which this order admits. And Page justice cited *The Inhabitants of St. Margaret Westminster* and of *St. Saviour Southwark*; where after solemn debate it was held, that a married woman may have a bastard, if her husband hath no access to her, though he be in *England*. Besides, the evidence of the marriage and of the life of the man, as set out in the sessions order, is imperfect and insufficient. Upon this, it was prayed by Mr. Marsh, that he might be at liberty to except to the original order. But this was refused, because the person charged was not in court. And though it was earnestly desired, that the rule to shew cause be enlarged, in order to bring up the party, and except to the first order; to which Probyn justice inclined; but Page justice strongly opposing it, the justices order was now confirmed, and the other quashed.

Upon a special order of sessions, wherein the fact was stated for the opinion of the court, the case was, that H. was divorced *à mensa et thoro*, and afterwards his wife lived with one Ellis in adultery, in the parish of *St. Giles*, and had several children called Ellis, and registered as his. *Et per cur.* When a woman is separated from her husband by such a divorce, the children she has during the separation, are bastards; for we will intend a due obedience to the sentence, unless the contrary be shewed; but if baron and feme, without sentence, part and live separate, the children shall be taken to be legitimate, and so deemed till the contrary be proved; for access shall be intended: but if a special verdict find the man had no access, it is a bastard; and so was the opinion of my lord Hale in the case of *Dickins and Collins*.

Child begotten after divorce *à mensa et thoro*, shall be taken to be a bastard; otherwise after voluntary separation, unless found that the husband had no access.  
1 Salk. 123.  
Mich 5 Ann.  
Westminster.

B. R. between the parishes of St. George and St. Margaret Westminster.

*Ejectione firmæ* for lands in *Munden* in the county of *Hertford*: The question was, upon evidence of the jury, whether *Edmund Andrews* dying the 23d of *March*, anno. 1610. and *A.* his feme being *privately enfeint*, but not delivered until 5th *Jan.* 1611. (which was forty weeks and nine days, and then delivered of a daughter named *Elizabeth*) shall be reputed the child adjudged.

A widow being delivered 40 weeks and nine days after her husband's death, the child adjudged.



legitimate.  
Cro. Jac 541.  
Mich. 17 Jac.  
1. B. R. Al-  
fop v. Bow-  
trell.

the father to the said *Elizabeth*, or that she were a bastard; for it was proved that he fell sick upon the 22d day of *March*, and died the day following of the plague: and that *Edmund Andrews* (father of the said *Edmund* who was dead) in malice to his son's wife, did much abuse her, and caused her to be dislodged from places where she was harboured, and to lie in the cold streets; and that she was so used for six weeks together before her travail; and she being brought into a woman's house, who commiserated her case, having warmth and sustenance, was delivered presently within twenty-four hours of the said *Elizabeth*: and this being proved, and this miſuage by five women of good credit, and two doctors of physick, viz. Sir *William Baddy*, and doctor *Mundford*, and one *Chamberlaine* (who was a physician, and in nature of a midwife) upon their oath, they affirming that the child came in time convenient to be the daughter of the party who died: and that the usual time for a woman to go with child was nine months and ten days, viz. *menses solares*, that is, thirty days to the month, and not *menses lunares*, and that by reason of want of strength in the woman or the child, or by reason of ill usage, she might be a longer time, viz. to the end of ten months, or more; and so both ancient and modern authors and experience prove: the court held here, that it might well be as the physicians had affirmed, that ten months may be said properly to be the time *mulieribus pariendo constitutum*. Against this, a recognizance was produced, *Trin. 18 Ed. 1. rol. 13.* in this court, that because a *feme* went eleven months after the death of her husband, it was resolved that the issue was not legitimate, being born *post ultimum tempus mulieribus pariendo constitutum*. But note, it is not there shewn what was *ultimum tempus mulieribus pariendo constitutum*. And the physicians further affirmed, that a perfect birth may be at seven months, according to the strength of the mother, or of the child himself, which is as long before the time of the proper birth; and by the same reason it may be as long deferred by accident, which is commonly occasioned by infirmities of the body, or passions of the mind: and so the court delivered to the jury, that the said *Elizabeth*, who was born forty weeks and more after the death of the said *Edmund Andrews*, might well be the daughter of the said *Edmund*: and in this case the marriage betwixt them being at *Utrick* beyond seas, and certified under the seal of the minister there, and of the said town, and that they cohabited for two years together as man and wife, was a sufficient proof that they were married. *Vid. 1 Hen. 6. 3. 21 Ed. 3. 9. 41 Ed. 3. 11.* What shall be said to be the time *mulieribus pariendo constitutum*, see Sir *Thomas Rydley's View of the Civil Law*, fol. 55. where he relates of a widow in *Paris* that was delivered of a child the fourteenth month after her husband's death, and yet the judges awarded the child to be legitimate. The like judgment was given in the consistory at *Wittenburgh*, in the case of a woman who was brought-to-bed in the eleventh month after her husband's death. *Vide Cornadi Manseri partem secundam de Matrimonii*, cap. 36. fol. 150. *Selden de successiōibus*, fol. 22. *Croke's Anatomy*, lib. 6. fol. 336.

Two justices removed *Edward Young* the younger, and *Rebecca* his wife, and *Mary* their child, from *Chilham* to *Preston* near *Faversham* (both in *Kent*;) and the sessions confirmed (in *all points*) the order of the two justices. The case, as stated to appear to the sessions, was, That the said *Edward Young* the younger, being legally settled in *Preston*, and not being then a widower was on the 25th of *January* 1758, WITHOUT the consent of his father, who was then living, married by licence in the parish church of *Tenham*, to *Rebecca Drury*, who was settled in the said parish of *Tenham*, and who is removed to *Preston* by the said order, AS the WIFE of the said pauper, the said *Edward Young* being then an INFANT of twenty years: and that afterwards, the said *Rebecca* was brought-to-bed, in the parish of *Chilham*, of the said *MARY*, removed by the order. Whereupon they adjudged and ordered that the said order so made by the two justices be, in *all points*, confirmed.

The marriage of a pauper being contrary to 26 G. 2. c. 33. sect. 11. (the man being under age and not, &c.) was holden to be absolutely void; and therefore the woman and child could not be removed to his settlement. 2 Bur. Rep. 897. Mich. 33 Geo. 2. Rex v. Inhabitants of *Preston* near *Faversham*.

Mr. *Lee*, who had moved to quash these orders, objected to that part of them which relates to the woman and child: for that the marriage was ABSOLUTELY null and void, by the express words of the marriage act 26 G. 2. c. 33. s. 11. As the pauper not being a widower, and being under age, was married by licence WITHOUT the consent of his father (who was then living). Mr. *Knowler* was to have shewn cause now, against quashing these orders. But he owned that the words of the act were so strong that he could not get over them; (being "That it shall be absolutely null and void to all intents and purposes whatsoever:") UNLESS, (he said,) the court shall think a declaratory sentence to be necessary.

But Mr. *Robinson*, who was on the same side, entered into the defence of these orders, and cited 2 *Strange* 1066. between the parishes of *St. Peter* and *St. Nicholas* in *Ipswich*; to shew that the word, "void" may be construed "voidable." He also cited the case of *Barber v. Dennis*, in 1 *Mod.* 69. and in 1 *Salk.* 68. where it was holden to be immaterial whether the apprentice *de facto* was legally so, or not. (And he observed that in 2 *Strange* 1067. the case of *Cuerden v. Leyland* is taken notice of, and distinguished from the case then before the court.) So, on 23 *H. 6. c. 10.* and 21 *H. 8.* mentioned in *Hob.* 166. in the case of *Winchcombe v. Bishop of Winchester* and *Pulleston*. So, on *Westm.* 2. So, on 8 *H. 6. c. 10.* concerning sheriff's bonds, (instanced in the same case in *Hobart*.) So on 1 *Eliz. c. 19.* concerning college leases, (there also mentioned.) He urged, that it is highly unreasonable, that a virtuous young woman and her innocent children should be turned a-drift, and be considered as whore and bastards, without having any opportunity to contest so severe a judgment against them. Therefore this marriage ought to be avoided by a sentence in the ecclesiastical court; and not in a collateral method, by an ex parte order of justices, made WITHOUT bearing them or any person on their behalf."

Mr. *Norton*, contra, was beginning to speak. But lord *Mansfield* (conceiving the point to be clear, and commending Mr. *Knowler* for his candour in giving it up) stopt him, and took the distinction between the acts of parliament made against one of the parties, and for the benefit of another of the parties.

parties, (and where such other party has an *election* either to take benefit of it, or not,) and acts of parliament made *against* BOTH. *This* is an act made *against* BOTH: and the marriage is thereby expressly declared “absolutely null and void to ALL intents and purposes *whatsoever*.” So that it is not like the cases cited, nor like the cases on the statute of bigamy 1 Jac. 1. c. 11. Which was made only against *one* of the parties. The other judges concurred with his lordship: and *they* also observed that this act was made against *both*, and Mr. justice *Foster* added— “Against the *innocent* CHILDREN of both.” And he said it would be against the spirit of the act to understand it *otherwise* than that the marriage shall be ABSOLUTELY void. Wherefore, *Per Cur.* The ORDER must be confirmed as to the man; but quashed as to the *woman* and *child*. Rule accordingly.

18 Eliz. c. 3. Stat. 18 Eliz. c. 3. [A. D. 1576. intituled] “Justices of peace shall order the punishment of the mother, and reputed father of a bastard, &c.”

2 Roll 82.  
Stiles 207,  
283. “A rogue shall be conveyed from constable to constable, until he come to the gaol. A stock to set the poor on work, shall be provided in every city and town corporate. Houses of correction shall be assigned in every county. Lands holden in socage may, during twenty years, be given towards the maintenance of houses of correction, and stocks for the poor. EXP.”

Cro. Car. 341,  
250, 470. Sect. 2. “Concerning bastards begotten and born out of lawful matrimony (an offence against God’s law or man’s law) the said bastards being now left to be kept at the charges of the parish where they be born, to the great burden of the same parish, and in defrauding of the relief of the impotent and aged true poor of the same parish, and to the evil example and encouragement of lewd life: (2) It is ordained and enacted by the authority aforesaid, That two justices of the peace, (whereof one to be of the *Quorum*, in or next unto the limits where the parish church is, within which parish such bastard shall be born, upon examination of the cause and circumstance) shall and may by their discretion take order, as well for the punishment of the mother and reputed father of such bastard child, as also for the

2 Bulst. 341,  
348, 350, 355. better relief of every such parish in part or in all; (3) and shall and may likewise by like discretion take order for the keeping of every such bastard child, by charging such mother or reputed father, with the payment of money weekly or other sustentation for the relief of such child, in such wise as they shall think meet and convenient: (4) And if after the same order by them subscribed under their hands, any the said persons, *viz.* mother or reputed father, upon notice thereof, shall not for their part observe and perform the said order, that then every such party so making default in not performing of the said order, to be committed to ward to the common gaol, (5) there to remain without bail or mainprize, except he, she or they shall put in sufficient surety to perform the said order, or else personally to appear at the next general sessions of the peace to be holden in that county where such

Mod. Cases in  
law 4.  
A provision  
for the keeping  
of bastards.  
Farther provisions relating  
thereto, 7 Jac.  
1. c. 4.

such order shall be taken ; (6) and also to abide such order as the said justices of the peace, or the more part of them, then and there shall take in that behalf (if they then and there shall take any ; ) (7) and that if at the said sessions the said justices shall take no other order, then to abide and perform the order before made, as is abovesaid. By 3 Car. 1. c. 4. continued until the end of the first session of the next parliament, and farther continued by 16 Car. 1. c. 4."

Stat. 7 Jac. 1. c. 4. [A. D. 1609.] made, among other purposes, "for the due execution of the laws against lewd and idle persons."

Stat. 7. "And because great charge ariseth upon many places within this realm by reason of bastardy, besides the great dishonour of Almighty God ; Be it therefore enacted by the authority aforesaid, That every lewd woman, which after this present session of parliament shall have any bastard which may be chargeable to the parish, the justices of peace shall commit such lewd woman to the house of correction, there to be punished, and set on work, during the term of one whole year ; (2) and if she shall afterwards offend again, that then to be committed to the said house of correction, as aforesaid, and there to remain until she can put in good sureties for her good behaviour, not to offend so again."

The punishment of lewd women who have bastards. 18 Eliz. c. 5. 2 Bulfr. 348.

Stat. 21 Jac. 1. c. 27. [A. D. 1623. intituled] "An act to prevent the destroying and murdering of bastard children."

"Whereas many lewd women that have been delivered of bastard children, to avoid their shame, and to escape punishment, do secretly bury or conceal the death of their children, and after, if the child be found dead, the said women do alledge, that the said child was born dead ; whereas it falleth out sometimes (although hardly it is to be proved) that the said child or children were murdered by the said women, their lewd mothers, or by their assent or procurement :

Stat. 2. "For the preventing therefore of this great mischief, Be it enacted by the authority of this present parliament, That if any woman, after one month next ensuing the end of this session of parliament, be delivered of any issue of her body, male or female, which being born alive, should by the laws of this realm be a bastard, and that she endeavour privately, either by drowning, or secret burying thereof, or any other way, either by herself, or the procuring of others, so to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed : in every such case, the said mother so offending shall suffer death as in case of murder, except such mother can make proof by one witness at the least, that the child (whose death was by her so intended to be concealed) was born dead. (2) And this act to continue until the end of the first session of the next parliament. 3 Car. c. 4. Continued until the end of the first session of the next parliament, and farther continued by 16 Car. 1. cap. 4."

It shall be murder for a mother to conceal the death of her bastard child.

**Stat. 3 Car. 1. c. 4.** [*A. D. 1623. intituled*] “An act for repeal and continuance of divers statutes.”

18 El. c. 3.

**Sec. 15.** “And so much of an act made in the eighteenth year of the reign of the said late queen *Elizabeth*, intituled, An act for the setting the poor on work, and avoiding idleness, as concerneth bastards begotten out of lawful matrimony [is continued until the end of the first session of the next parliament. *Sec. 22.*] (2) With this, that all justices of the peace within their several limits and precincts, and in their several sessions, may do and execute all things concerning that part of the said statute, that by justices of the peace in the several counties are by the said statute limited to be done.

**Stat. 13 & 14 Car. 2. c. 12.** [*A. D. 1662. intituled*] “An act for the better relief of the poor of this kingdom.”

Putative fathers of bastard children, running away, how to be proceeded against.

**Sec. 19.** “And whereas the putative fathers and lewd mothers of bastard children run away out of the parish, and sometimes out of the county, and leave the said bastard children upon the charge of the parish where they are born, although such putative father and mother have estates sufficient to discharge such parish; (2) Be it therefore enacted by the authority aforesaid, That it shall and may be lawful for the churchwardens and overseers for the poor of such parish where any bastard-child shall be born, to take and seize so much of the goods and chattels, and to receive so much of the annual rents or profits of the lands of such putative father or lewd mother, as shall be ordered by any two justices of peace, as aforesaid, for or towards the discharge of the parish, to be confirmed at the sessions, for the bringing up and providing for such bastard-child: (3) And thereupon it shall be lawful for the sessions to make an order for the churchwardens or overseers for the poor of such parish, to dispose of the goods by sale or otherwise, or so much of them for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the sessions, as aforesaid, of his or her lands.”

**Stat. 6 Geo. 2. c. 31.** [*A. D. 1733. intituled*] “An act for the relief of the parishes, and other places, from such charges as may arise from bastard children born within the same.”

“Whereas the laws now in being are not sufficient to provide for the securing and indemnifying parishes and other places, from the great charges frequently arising from children begotten and born out of lawful matrimony: For remedy thereof, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June*, in the year of our lord one thousand seven hundred and thirty-three, if any single woman shall be delivered of a bastard child, which shall be chargeable, or likely to become chargeable to any parish, or extraparochial place, or shall

After 24 June 1733 the person charged

shall declare herself to be with child, and that such child is likely to be born on oath of a bastard, and to be chargeable to any parish, or extraparochial place, and being the father of a bastard child, shall in either of such cases, in an examination to be taken in writing, upon oath, before any one or more justice or justices of the peace of any county, riding, division, city, liberty or town corporate, wherein such parish or place shall lie, charge any person with having gotten her with child, it shall and may be lawful to and for such justice or justices, upon application made to him or them by the overseers of the poor of such parish, or by any one of them, or by any substantial householder of such extraparochial place, to issue out his or their warrant or warrants for the immediate apprehending such person, so charged as aforesaid, and for bringing him before such justice or justices, or before any other of his majesty's justices of the peace of such county, riding, division, city, liberty, or town corporate, and the justice or justices, before whom such person shall be brought, is, and are hereby may be immediately apprehended, authorized and required to commit the person so charged, as aforesaid, to and committed to the common gaol or house of correction of such county, riding division, city, liberty, or town corporate, unless he shall give security to indemnify such parish or place, or shall enter into a recognizance with sufficient surety, upon condition to appear at the next general quarter-sessions or general sessions of the peace, to be holden for such county, riding, division, city, liberty, or town corporate, and to abide and perform such order or orders as shall be made in pursuance of an act passed in the eighteenth year of the reign of her late majesty queen *Elizabeth*, concerning bastards begotten and born out lawful matrimony." 18 Eliz. c. 3.

*Sett. 2.* "Provided nevertheless, and be it enacted by the authority aforesaid, That if the woman so charging any person, as aforesaid, shall happen to die, or be married, before she shall be delivered, or if she shall miscarry of such child, or shall appear not to have been with child at the time of her examination, then, and in any of the said cases, such person shall be discharged from his recognizance at the next general quarter-sessions or general sessions of the peace, to be holden for such county, riding, division, city, liberty or town corporate, or immediately released out of custody, by warrant under the hand and seal, or hands and seals, of any one or more justice or justices of the peace residing in or near the limits where such parish or place shall lie." Such person on the woman's miscarriage, &c. shall be discharged.

*Sett. 3.* "Provided also, and be it enacted by the authority aforesaid, That upon application made by any person who shall be committed to any gaol or house of correction by virtue of this act, or by any person on his behalf, to any justice or justices residing in or near the limits where such parish or place shall lie, such justice or justices is and are hereby authorized and required to summon the overseer or overseers of the poor of such parish, or one or more of the substantial householders of such extraparochial place, to appear before him or them at a time and place to be mentioned in such summons, to shew cause why such person should not be discharged; and if no order shall appear to have been made in pursuance of the said act of the eighteenth year of the reign of her late majesty queen *Elizabeth*, within six weeks after such woman shall have been delivered, such justice or justices shall let at liberty The justices, on prisoner's request, may summon the overseers, &c. and if no order be made within weeks after the woman's delivery, prisoner to be let at liberty

shall and may discharge him from his imprisonment in such gaol or house of correction, to which he shall have been committed.

The woman  
not to be ex-  
amined relating  
to her preg-  
nancy, till one  
month after  
her delivery.

*Sec. 4.* " Provided always, and be it further enacted by the authority aforesaid, That it shall not be lawful for any justice or justices of the peace to send for any woman whatsoever, before she shall be delivered, and one month after, in order to her being examined concerning her pregnancy, or supposed pregnancy, or to compel any woman before she shall be delivered to answer to any questions relating to her pregnancy; any law, usage or custom to the contrary notwithstanding.

Order of ses-  
sion, on appeal  
from an order  
of bastardy  
made by two  
justices, is final  
and conclusive.  
Cro. Car.  
Hil 9 Car. 1  
B. R. Peid  
geon's case.

*Pridgeon* was brought to the bar upon an *Habeas Corpus*, and it appeared upon the return thereof, that he at *Lincoln*, upon complaint to two justices of the peace next adjoining, was ordered to keep a bastard child, he being according to the said order the reputed father. From this order he appealed to the next quarter-sessions of the peace; at which sessions the matter being examined, he was discharged, and the former order repealed. Afterwards at another quarter-sessions of the peace, the matter being examined, it was ordered according to the first order, That he should be accounted the reputed father of the bastard, and should keep it; and that if he did not perform it, he should be apprehended and committed, and thereupon being apprehended and committed, and all this matter returned, the court held, That he being discharged at the next sessions, to which he appealed according to the statute of 18 *Eliz.* the second sessions hath no power to alter it. And because none were there to maintain this return, he was bailed, and day given, That if other matter were not shewn, &c. he should be discharged.—It was now moved again by *Grimston*. And all the court, *Richardson* chief justice being present, delivered their opinions *seriatim*, That the order in the first sessions was concluding; and the order in the last sessions was merely void; for the statute of 18 *Eliz. cap. 3.* appointing, that upon appeal to the sessions from an order of two justices of the peace, their order shall bind him who is adjudged to be the reputed father; and he in this case having appealed to the sessions, and they making an order in court, that order is final, and no other sessions, nor authority may meddle therewith. And to prove this *Jones* said, it was resolved by all the justices of *England*, upon conference, in the case of one *Andrew Windfore*, upon the statute of 43 *Eliz. of charitable uses*. If an appeal be upon an order of the commissioners of charitable uses, to the lord keeper, and he by decree confirm the order, that confirmation is perpetually binding, and there cannot be a bill of review thereof. So it hath been resolved, where, upon the statute of 37 *Hen. 8.* for tithes in *London*, if a judgment be given by the lord mayor, and upon an appeal to the lord keeper, that judgment be affirmed, &c. the party is concluded and shall not have aid by bill of review; whereupon all the court here resolved, That the second order made at the second sessions was merely void, and his commitment unlawful, wherefore he was absolutely discharged. And it was held, that the statute of 3 *Carol.* doth not aid this case; for the statute there is, That if the two next justices of peace make not provision for the bastard, the justices of peace at their quarter-sessions shall settle an order for keeping of the bastard, as the two next justices

justices ought, but it doth not give more power or authority, nor give authority to one sessions, to alter that which in a former sessions was ordered:

Upon a petition preferred by the ville of *Alderton*, unto Sir *William Jones* justice of assize, the question being upon the statute 18 *Eliz. c. 3.* touching provision to be made for a bastard child. The case appeared to be this: One having a bastard child, upon a complaint made of this at the quarter-sessions, it was referred, according to law, unto the two next justices of the peace, to have the examination and ordering thereof: The next two justices of the peace, were these, (S.) Sir *Richard Tracy*, and Sir *John Tracy*, who heard and examined the matter, and made an order in it against one *John Wood* of *Beckford* in the county of *Gloucester*, to be the reputed father of the child, and ordered him to pay and allow towards the keeping of the child weekly, 1 s. 4 d. afterwards the said *John Wood* refuseth to perform this order, but appeals to the quarter-sessions, according to law; the justices of peace, at their quarter-sessions, did re-examine the matter, and did disallow of this former order made by the two next justices, and they there did make a new order of sessions, by which they did charge another person (S.) one *William Cele* of *Beckford* to be the reputed father of this bastard child: upon this the inhabitants petitioned Sir *William Jones*, justice of assize, to hear the matter against the assizes, which he accordingly so did, and after both the orders were read in court, viz. That order which was first made by the two next justices, and also the subsequent order, which was made at the quarter-sessions by the justices of peace, *Jones* justice of assize would not enter into the re-examination of this cause, but did, *in omnibus*, affirm the last order made by the justices of peace at their quarter-sessions upon the parties appeal to them from the first order; which last order, made at the quarter-sessions, was a final order, and no appeal to be admitted against this order; and so as he then affirmed, it had been adjudged divers times, both formerly, and also of late time, in the *King's Bench*: In a *Lincolnshire* cause, which concerned one *Pridgeon* an officer of the bishop of *Lincoln*, who was questioned, and it was laid to his charge, that he was the reputed father of a bastard child; this was there referred to the examination and ordering of the two next justices of peace, who, upon examination of the matter, found him to be the reputed father of the bastard child, and so made an order against him for to make a weekly allowance towards the maintenance of the bastard child: afterwards he appealed to the quarter-sessions from their order, and the justices of peace at their quarter-sessions, did discharge the said order, and another was there found to be the reputed father, and an order made at the same quarter-sessions against him. Afterwards at another sessions of the peace upon a re-examination of the matter, another order was there made against the last order, making the same void; and by this order *Pridgeon* was found again to be the reputed father of the bastard child; and so again ordered to make a weekly allowance towards the maintenance of the said child; afterwards *Pridgeon* appeals again unto the judges of the *King's Bench*, and there, upon a re-examination of the matter, it was clearly resolved by all the judges there, that *Pridgeon* was to be freed and discharged of and from the payment of the 2 s. a week by the second order made at the quarter-sessions, the same order being altogether

No appeal lies from an order of bastardy made at the quarter sessions.  
2 Bull. 355.  
At Gloucester assizes, 20 July 13 Car. 1. 1637.



gether illegal; and that the first order made by the justices of peace at their quarter-sessions, upon the appeal first to them, should stand in force, and that no appeal should be admitted against this order, so made upon the first appeal, which was a legal order, and the same to be final, and not to be altered by the judges of assize; and so it was then resolved by all the judges of the *King's Bench*. And Sir *William Jones*, justice of assize, affirmed the former order, made by the justices of peace at their quarter-sessions. And so it shall be, also upon the statute of 43 *Eliz. cap. 4.* touching charitable uses: If the commissioners make an order and a decree in the case, and upon an appeal to the lord keeper, and exceptions put in before him to this decree, and upon hearing of them, the decree made by the commissioners is confirmed by the lord keeper, this decree is now by this made to be final, and that no subsequent appeal is afterwards to be admitted in this case, after this confirmation of the former decree by the lord keeper: No more shall it be here admitted to appeal from this order thus made at the quarter-sessions of the justices of peace, but that this shall be final, and therefore this order by them thus made at their quarter-sessions upon the appeal to them from the order made by the two next justices of peace, shall be now final and stand in force; and this is to be performed by the party ordered, without other re-examination, or alteration of the same; and this was accordingly so ordered by him.

The justices of the sessions have power and authority originally, to make any order in the case of bastardy.  
Cro. Car.  
470. Pasch.  
13 Car. 1.  
Slater's case.

*William Slater* was, by *Elizabeth Eaton*, charged with the getting of a bastard child on her body. The two next justices did not make any order in it, according to the statute of 18 *Eliz.* but the cause came first to be originally heard at the general sessions of the peace at *Spaulding* in the county of *Lincoln*, 13 July 8 Car. where the justices ordered, That whereas it was proved by witnesses, that one *Alexander Leigh* had often used private company with the said *Elizabeth Eaton*, and had confessed that he had done as much as a man could do to a woman; and that she had said, that *Leigh* had the use of her body, and that she feared she was with child by him; That thereupon *Slater* should be discharged of the child, and she be committed to the house of correction during her life; and that *Alexander Leigh*, the reputed father, should pay from the birth of the child, to the churchwardens of *Pinchback*, weekly 14*d.* towards its maintenance, until the age of fourteen years; and the overseers then to take the child. Afterwards 1 August 12 *Caroli*, at the assizes at *Lincoln*, upon complaint of the inhabitants of *Pinchback* to the judges, they ordered, that two of the next justices to the parish where the child was born (naming them,) should take consideration thereof, according to the statute, and settle such course therein, as to justice appertained; whereupon those two justices *primo Martii* 12 *Caroli*, declared the said *William Slater* to be the reputed father, and that he should pay (the child being five years old, and all that time having been maintained at the parish charge) at one payment 18*l.* to the overseers of the parish, and 14*d.* weekly till the child came to fourteen years of age, and to give his bond of 50*l.* for performance thereof: And the said *Slater* refusing to pay, or give bond, the said justices

tices of peace committed him. Whereupon he sued out a *Certiorari* to remove the proceedings into this court, who appearing upon an *Habeas Corpus*, and upon reading of the return, and hearing counsel on both sides, *Grimston* being of counsel for the said *Slater*, these points were resolved by the whole court. First, that before the statute of 3 *Caroli cap. 4.* the justices at the sessions had no authority to meddle in the case of bastardy, till the two next justices according to the statute of 18 *Eliz. cap. 3.* had made an order therein: and that then, and not before (the party refusing to perform the order, upon his appeal giving reasonable security to appear at the next sessions, and abide such order as the justices there, or the more part of them should make, &c.) the justices of the sessions might make a new order, &c. otherwise not. Secondly, That by the statute of 3 *Car. cap. 4.* [See p. 322.] the justices of the sessions have power and authority originally, to make an order in the case of bastardy; for the words of the statute are, *viz.* That all justices of the peace within their several limits and precincts, and in their several sessions, may do and execute all things concerning that part of the statute touching bastards, begotten out of lawful matrimony, that by justices of the peace in the several counties, are by the said statute limited to be done. And therefore the first order made by the sessions was in this case good and legal, and the second order made by the two next justices, void, and could not alter or revoke the order which was first made by good authority. And for proof thereof one *Pridgeon's* case [See page 324.] was cited. Thirdly, It was objected, that the commitment of *Elizabeth Eaton* for life, for her first offence, was more than the justices had authority to do; and therefore the order void. But it was resolved, That an error in part, and in that part of the order which only concerned her, should not vitiate the whole order.

Upon a *habeas corpus* *Hammond* appeared, the return thereof being read, The justices it appeared that he was committed and detained in prison in the county of *Oxon.* *Littleton* moved the court for *Hammond*, for his discharge, the ground of his commitment being not good, the same not being done in a due and legal manner, being upon the statute of *Eliz. cap. 3.* made for provision for bastard children; *Hammond* having got a bastard-child. By the statute of 18 *Eliz. c. 3.* (see page 320) this is to be referred unto the examination of the two next justices of the peace, for to examine, and order the same; they accordingly did examine the matter, and made their order therein, which if the party refuse to perform, or to enter into bond, to appear at the next quarter-sessions, then they are to commit him to prison, without bail or mainprize. *Hammond* accordingly entered into this bond, and after, at the next quarter-sessions, where he appeared, the justices there, did make another order, and because he did refuse to perform this, they did there commit him to prison; which imprisonment thus by them, was illegally done, this being out of their power; they having no such power given them, by the statute; but upon his refusal to perform their order, they ought to have pursued their ordinary remedy against him, (S.) upon his bond entered into, but not by such commitment. *Hide chief justice:* The justices ought not here to have committed him, for not performing of their order made at the quarter-sessions; where they

The justices in sessions have no power to commit a person for disobeying an order made by them on appeal from an order of bastardy made by two justices.  
2 Bullst. 341.  
Mich. 3 Car.  
1. B. R. The King against Hammond.

do alter the former order; by this the first order made by the two next justices of peace is disannulled, and made void, but in this case, *Jones*, justice of assize, by assent did make this order, that he should pay 10*l.* this order was certified: afterwards, *Sir Henry Poole* did commit him, for not performing the order of the quarter-sessions; the court being of all this informed, granted a *habeas corpus* to remove the body, and the cause of the proceedings had against him; this all appearing unto the court, upon the return of the *habeas corpus*, and that this imprisonment was illegal, by the rule of the court he was bailed.

A woman having two bastards shall not be proceeded against upon the stat. 7 Jac. 1. c. 4. as for her second offence, not having been punished for her first offence.  
2 Bull. 318.  
at Salep assizes, 19 Mar.  
7 Car. 1.

At Salep assizes, before *Sir William Jones* justice of assize, this matter happened before him on the crown side, upon the statutes of 18 Eliz. cap. 3. and 7 Jac. cap. 4. (See page 321.) touching bastard children. This question was propounded by *Sir John Corbet*, a justice of the peace, unto *Sir William Jones* justice of assize, upon these statutes; by the first statute punishment is to be inflicted; and by the second statute, if she offend the second time, then she is to be sent to the house of correction for one year, and to put in sureties for her good behaviour, and not to offend again. Upon this, the case propounded was, that one had a bastard child, but she was not questioned for it, no proceedings being had against her upon the statute of 18 Eliz. cap. 3. Afterwards she had a second bastard child; the question now propounded was, whether she shall now be proceeded against upon the statute of 7 Jac. cap. 4. as for her second offence, she not having been punished for her first offence; whether this second offence shall be now taken for the first offence, or not. *Jones* justice: She shall not be punished upon the statute of 7 Jac. cap. 4. as for her second offence, unless she had been before questioned and punished for her first offence: but she might have been punished for her first offence, either by the statute of 18 Eliz. cap. 3. or by the statute of 7 Jac. cap. 4. but is not to be punished by the statute of 7 Jac. as for her second offence, unless she hath been before punished for her first offence; but this second offence shall be now deemed and taken to be as her first offence, and so is to be punished for the same according to the law.

Order of two justices to pay so much a week to the parish until the child should be 12 years of age, not good, because the father may maintain it.  
1 Vent. 48.  
Mich. 21  
Car. 2. B. R.  
*Burwell's* case.

Upon complaint to two justices about a bastard child; they by the 18 Eliz. order one *Reynolds* to keep the child; upon this *Reynolds* appeared at sessions; where they vacated the order, and referred it back again to the justices, who do nothing in it. The next sessions after *Burwell* is judged the reputed father, and ordered to pay so much a week to the parish, until the child was twelve years old. This was removed into the *King's Bench* by *certiorari*. And they resolved, that the referring back again to the justices, by the justices at sessions, was not warranted; and that the last order was insufficient, because it was that he should pay the parish so much a week until the child was twelve years old, whereas the father might take it always when he pleased; but it ought to have been that he should allow so much a week so long as it should be chargeable to the parish; wherefore they bound the parties to appear at the next sessions by recognizance.

By *certiorari*, an order for the keeping of a bastard child by the justices of the peace, in pursuance of the statute of 18 Eliz. was removed into this court, which was excepted to. First, for that they had ordered the father to allow 4*s.* to the midwife; whereas it did not appear, that the parish had procured her, or that they were chargeable with it. Secondly, for that they ordered 7*s.* a week, to be allowed for the nursing, cloaths, &c. of the child, until it should be able to get its living by working; which was said to be excessive in the sum, and uncertain for the time, for it should have been for so long time as he shall be chargeable to the parish. *Hale* said, that they could make no allowance to the midwife, unless in discharge of the parish. *Twissden* said, that they could not order the 7*s.* a week to be paid until it should be able to get its living; for perhaps the father would take it away and maintain it himself, which he may do if he please; but that the order may be quashed without more delay, and the matter remanded to farther examination, *Sherman* consented to pay all the arrears of the 7*s.* a week, and the costs that had been expended in maintenance of this order, or what more should be laid out, in case he should be again found the reputed father of the child, for he said it was imposed upon him by combination; whereupon it was quashed.

*Richards* and *Samon*, being churchwardens, brought an action against *Hodges*, on his bond in the usual form to indemnify the parish in the case of a bastard child. The defendant pleaded *non damnificatus* generally. The plaintiffs replied, that neither the defendant nor any other, for the space of one month after the making of the bond, did provide any maintenance for the child; by reason whereof the parishioners, to prevent the said child's perishing by hunger and cold, were forced for all the time aforesaid to pay, and have paid 4*s.* for the maintenance and nourishment of the said child. To which the defendant rejoined, that he would have nourished the said child at his proper costs and charges for all the time aforesaid, and offered so to do, but they refused to permit him, and of their own wrong; and against the will of the defendant, put the said child to nurse, and paid the said 4*s.* Upon which rejoinder, the plaintiffs demurred in law. And by the court, the rejoinder is not good, because it is a departure from the first plea in bar; for the defendant in his plea says, that the parishioners were not damnified, and when the plaintiffs by their replication shew how they were damnified, there the defendant cannot rejoin that this damnification was of their own wrong, as here he hath done, but he ought to have pleaded that at first in his plea in bar. And tho' it was urged by *Saunders* for the defendant, that this was no damnification at all, because it was the voluntary act of the parish to put the child to nurse, when the defendant himself offered to maintain it, and that they ought not to take advantage of their own wrong; yet it was not allowed: for the court held clearly, that the rejoinder was a departure; and for that reason, it was adjudged for the plaintiffs.

Debt upon a bond, with a condition to indemnify and save harmless the parish of *Eling* from a bastard child. Plea; that the defendant had maintained, The right way to make an order of bastardy is, &c.

*King as the  
child shall be  
chargeable.*

—Father  
may maintain  
the child him-  
self.

1 Bu. Just.

182, cites.

Trin. 27

Geo. 2, in B.

R. Newl. and  
and Osman.

maintained, supported, and nourished the said child to a certain day, that is to say, to the 27th of *October* last, and that then he offered to take the said child to maintain, which they refused, and that if the churchwardens or any of them have been damnified, it is of their own wrong. Replication; that for three weeks from and after the said 27th day of *October*, the defendant did not provide nourishment for the child, but failed, and by reason thereof the plaintiffs, after the three weeks, expended 3 s. for the maintenance of the child, and so were damnified. Demurrer; and joinder in demurrer. The question of law is, Whether a putative father may take a bastard child into his own custody to maintain it, or whether the parish shall have the care of it? And the case in 2 *Saund.* 83. was mentioned, wherein the court held this to be a good plea. 1 *Ventr.* 48. that the father may maintain the child himself. 1 *Ventr.* 210. that the justices can only make an order to maintain, so long as the child shall be chargeable. — By *Lee Ch. J.* The right way is, to make the order, so long as the child shall be chargeable. It is not to be limited to any certain time. And the reason given in all these cases is, that the father or mother may take it before the time. The intention of the statute of *Elizabeth* was, to have a provision for the bastard, and at the same time to indemnify the parishes. And the law could never think of taking the care and education of children from their parents. Nor could this enter into the mind of any judge. Nourishing and maintaining certainly answers education. It hath been objected, that the excuse is collateral: I do not think so; for all the inhabitants are parties, and the overseers are but trustees for them. It seems a sufficient excuse; and there is no answer on the part of the plaintiff to it. No objection has ever been thought of to pleas of this kind. — *Wright J.* In the case in *Saunders*, it seems to have been admitted, that if this had been pleaded in the first instance, it would have been good. I never did hear before, that the care of the child devolved upon the parish, where there was any other person to take care of it. They are obliged to maintain the child, where it is in danger of starving. This court has constantly held, that the father has a right to take it away, by quashing the orders made in manner above-mentioned. This is not a collateral excuse; but such an one as will save the penalty. And I cannot see that the parish has any sort of right or interest in the child. *Dennison J.* The material objection taken to this plea is, whether or no the putative father of a bastard child can by the law of *England* take his bastard child from the parish? I never did hear this doubted before. And I think that the notion that he cannot, is not to be countenanced nor encouraged. The law does not suppose, that a man will not maintain his own child. It is said, the next heir is not to be trusted with the guardianship. I am sorry, that was ever introduced into the law of *England*. It is an injurious notion of the people of *England*. I will rather suppose, that the parish officers will be cruel to the child, than the father. All the cases admit tacitly that the father hath such a power. And some of them say so expressly. And I am very well satisfied that the law is so. Inhabitants, churchwardens, overseers, are all the same; and every part of the condi-

tion

tion is answered. I have known this plea very often pleaded. And that case in *Sanders* is the rule.—*Foster* J. I am not so clear in these points. I think the care of educating bastard children, is not to be considered as a burthen on the parish, but as a trust; and that it should not be so easy for fathers to take them out of their care and custody. The statute is express, that the justices shall order the father to contribute to the parish for the maintenance of the child. Though it is not to be supposed that fathers will destroy their bastard children, yet they may look upon them as a burden and a shame, and therefore either neglect them, or put them into improper hands. The resolutions and orders of justices of the peace have been grounded upon this; not for requiring security till the child came to a certain age, but because the orders extended the age too far. Therefore I am not so clear. The case in *Saunders* was only his own opinion.—Judgment for the defendant, unless desired to be argued again this term. (This was at the desire of the plaintiff's counsel.)

Motion for an information against the defendant, who with another justice made an order of bastardy upon one *Fitzgerald*, without summoning him to appear before them to make his defence; upon appeal to the sessions he was acquitted, and put to great expences, which it was insisted was contrary to natural justice. By 18 *Eliz. c. 3.* the justices, upon examination of the cause and circumstances, may make an order according to their discretion. *Mich. 13 Geo. 1.* The King against *Cleg*. The King against *Holland*. The King against *Venables*. The King against *Squire* and *Allington, Hill. 12 Geo. 1.* and summons is as old as the creation. 3 *Gen. v. 9.* On a rule to shew cause, serjeant *Corbet* for the defendant: On penal statutes the defendant has only a time in the first instance to make his defence; but in cases of bastardy it is different, for he has a proper time by the statute given to be heard at the sessions; it is no more necessary to have notice here than on an indictment.

An information denied against a justice who made an order without summoning the party, because the order, though in nature of a judgment, is yet not strictly a conviction. 1 *Seff. Ca.* 179. *Trin. 6 & 7 Geo. 2.* The King against *Cotton*.

But by Mr. justice *Page*: This is a judgment, the other is no more than a charge; it would not be necessary in cases of removal, to give notice to the parish to whom the pauper is sent, which is never done. *Mich. 4 Geo. 1.* The King against *Blackwell*. Order of bastardy good, though it did not appear the party was summoned. Sir *Thomas Abney* on the other side: This is an adjudication, and equal to a conviction; an indictment is only a charge till the judgment. Mr. ——— serjeant *Hayward*: Examination is requisite by the statute. Mr. justice *Page*: No man in an office can be supposed to be so ignorant as not to know it is against natural justice to convict a man without a summons; the examination ought to be so made, that the truth may appear, and that must be by examining both sides, otherwise it is partial; the scandal, the expence, and the disorder in Mr. *Fitzgerald's* family, are things that ought to be considered; here was no taking by warrant, and therefore an action of false imprisonment would not lie; and this is the only method can be used to punish the justice. Mr. justice *Probyn*: The principal objection about a summons is right in law, and in reason; though

appeal is given, yet the order is a judgment, and puts the man under difficulties; possibly an action on the case might be framed; this may possibly have been only an error in judgment; hard to grant information. Mr. justice *Lee*: If this was strictly a conviction, an information ought to be granted; but it is otherwise in the case of orders; and no summons was then held to be necessary to be set out; I do not give any judgment where a summons is necessary, and it is doubtful whether this summons is necessary. Discharged the rule. And if justices take up a man by warrant for being putative father, they may bind him over to sessions without making an order; and the sessions may make an original order.

Sessions may make an original order.

Report of the preceding case from a manuscript. Trin. 6 & 7 Geo. Rex v. Sir John Cotton.

Mr. *Hayward* moved for an information against the defendant a justice of peace, for making an order of bastardy upon a man, without summoning him, or hearing what he had to say against it. *Lee* justice doubted whether it was necessary to summon the reputed father; therefore the court ordered Mr. *Hayward* to look into precedents, and move it at another day; and some days after, he informed the court that he had looked into this matter, and that the statute 18 *Eliz. c. 3.* was what the justices went upon; and that act directs an examination of the *cause and circumstances*; and *that*, he said, could not be done, unless *both* sides were heard: and tho' the act says, *they shall take order by their discretion*, yet that discretion must not be arbitrary, but controuled by the rules of law. And he cited the *R. and Gregg, Mich. 13 G. 1. R. v. Holland, Trin. 5, 6 G. 2. Rex and Venables, 11 G. 1.* and said it was contrary to common justice, to condemn a man unheard. Serjeant *Corbet* on the other side said, that the man was served with the order, and was heard at the sessions, upon his appeal; and the order against him, was discharged.—*Page* justice said, What satisfaction is that to the man, for the trouble and costs he had been at upon his appeal, when perhaps, if he had been summoned, he might have shewn good cause before the justices, so that no order at all, would have been made. Court ordered him to shew cause. This case coming now on again, *Baines* serjeant for the defendant said that this was a case of the first impression, and that a summons was not necessary, because the party has a right of appealing; and the oath of the woman, is a sufficient foundation for the justices to go on; and that if summons was necessary, it would be necessary to set it forth in the order; and yet it is held well without it, *Rex and Blackwell, M. 7 G. 1.*—'Tis the common practice not to summon. *Probyn*: 'Tis always customary to make a warrant, and to bring the party before a justice, upon the oath of the woman. *Page*: Upon the oath of the woman, the justice grants his warrant, and so is the custom. *Baines* serjeant: The justice can't grant a warrant on the oath of the woman, before the child is born. *Page*: That is true, because till the child is born, the stat. 18 *Eliz.* gives the justices no jurisdiction. *Baines* serjeant:—But if the justice has done wrong, 'tis not a sufficient ground for an information; for it does not appear here was any fraud, but a mere error in judgment. *Abney*: 'Tis admitted that on conviction on a penal law, a summons is necessary. This is a formal adjudication, and tho' not called a conviction in the statute, yet it is of the same nature; and informations are usually granted for this offence.

offence. *Rex and Venables*, 12 G. 1. That was a conviction for selling ale without a licence. *Rex and Allington*, mayor of *Hertford*, M. 11 G. 1. on affidavit that there was no summons, an information was granted. The reason why a summons is not necessary on an indictment is, because that is only an accusation. But this is a judgment. As to the inconvenience of its giving the party an opportunity of going off, that is no reason why the party should not be heard. *Hayward*: The act chalks out the method how the justice shall proceed, viz. he shall examine, and that must be on hearing of both sides. *Rex and Gregg*. *Rex and Holland*. These cases I cited last term, and neither of them is answered; and tho' there the court said, they would intend the justice did right; yet they said in case the contrary appeared, they would punish him. *Rex and Hebar*. M. 5 G. 2. *Page*: This court is always tender of granting informations against justices of the peace; and that there is a great difference, where he exercises his jurisdiction maliciously, and where he is guilty only of an error in law. I think no man can be so ignorant of the law and natural justice, as to think that no summons is necessary. The man in this case is put to great charges, and great expence of reputation. I think Mr. *Hayward's* construction of the act is right. But I doubt whether an information in this case, ought to go or not: but I would have it understood that there ought to have been a summons. *Probyn*: This is the first instance of complaint of this nature. Common law and justice require that there should be a summons; and tho' the party has liberty of appeal, yet the first is a judgment; and therefore the justice has done wrong; and I hope the justices (especially those of *Middlesex*) will take notice of it. But I think this way of proceeding by information is not the only method the party has; for a special action may possibly be framed; and as here does not appear to be any wilfulness, and therefore may possibly be only an error in law, I am against granting this information. *Lee*: If that is a conviction, I think the justice ought to be punished; but I think that a distinction has always been taken between an order and a conviction; and that in the last a summons is necessary, and will never be intended; but I question whether a summons is necessary on an order. By stat. 3 Car. 1. The sessions have an *original* jurisdiction in case of bastardy. *Page*: The rule must be discharged. But I would have it understood that it is my opinion, that summons is necessary.—See 6 Mod. 41. where *Holt C. J.* held a summons necessary, and that it was abominable to convict a man behind his back.

Motion for an information against the defendants, two justices of *Devonshire*, for making an order on one *Nicholas Mould*, adjudging him to be the putative father of a bastard child, without summoning him, and also for refusing to hear his witnesses. Sir *Thomas Abney* shewed cause, and said he was summoned by Sir *George Chudleigh*, a third justice of the peace, to appear at the next monthly meeting of justices; that then the mother came, and his witnesses, but *Mould* not appearing, the justices would not hear the witnesses; because the man himself was not there. But upon examination of the woman, they then made this order, why he gave notice

Information moved for against justices, for making an order of bastardy on a person, upon pretence that he was not summoned, but the contrary appeared.



ing, it was de- tice of appeal to the sessions, and did not appear there? Order properly  
nied. 2 Seff. confirmed. Lord chief justice: Supposing the man was summoned, and  
Ca. 192. did not appear, the justices are not then bound to hear any evidence for  
East 8 G. 2. him; and this court will not hear any evidence in behalf of a person who  
The King should attend here, and does not. By *the court*: The man did not attend  
against Tay- at the next sessions, as he ought to have done. Lord *chief justice*: It does  
lor and Neale. not appear to me that these justices have acted criminally, but on the con-  
trary this complaint appears to be groundless. *Mould* appeals to the ses-  
sions, and deserts that appeal, and does not complain here till *Cole* the  
constable, who was to serve the summons, had been dead a year. The  
justices also swear they saw a summons under the hand of Sir *George Chud-*  
*leigh*, which a third justice might grant. Besides it appears on affidavits,  
that *Mould's* father and mother attended to give evidence for him, which  
shews he had notice, though not strictly, that he was summoned, yet ly-  
ing by until after the death of the constable, strongly implies it. Indeed  
if any real excuse had been made, as that the man was sick, the justices  
should have deferred it; but no reason at all here to do it; and thought  
the rule ought to be discharged with costs.

These justices have no more to do than to enquire into the probability  
of summons, and they swear expressly that *Cole* was duly sworn to the ser-  
vice of the summons; therefore it must be understood, that there was a  
proof actually made of the service of the summons. Rule discharged  
with costs.

Marriage doth  
not exempt  
the mother of  
a bastard  
child from  
contributing  
towards his  
maintenance.  
1 Bu. Jult.  
180. cites  
East. 5 G. 3.  
Ellen Bent's  
case.

If the mother shall marry before any order made, it hath been doubted  
whether the justices can then charge her, as having no effects of her own,  
the same, by the marriage been vested in the husband. As in the case of  
*Ellen Bent*, E. 5 G. 3. she was delivered of a bastard child in the parish of  
*Clifton*. After which, and before any order made, she married one *Ab-*  
*raham Taylor* of the parish of *Middleton*. The overseers of *Clifton* apply  
to the justices, who made an order of filiation, charging her with 8*d.* a  
week towards the relief of the parish. She pleaded her utter ina-  
bility, and refused to pay. Upon which the justices commit her to the  
house of correction. She was brought up by *habeas corpus*, and her coun-  
sel moved for her discharge, insisting upon the illegality of her commit-  
ment; for that, being a married woman, she was not an object of the  
justices jurisdiction. But it was resolved by the court, that marriage doth  
not exempt the mother of a bastard child from the power of the law.  
And she was remanded.

Order of bas-  
tardy quash-  
ed, being  
made three  
years after  
appeal.  
1 Seff. Ca.  
234. Trin.  
1 Geo. 2.  
The King  
against the In-  
habitants of  
*Arundel*.

Two justices make an order that defendant should pay a *sum in gross*,  
and also 2*s.* *per* week for so long as the child should be chargeable; the  
party appeals to the sessions, who confirm the first order; at a subsequent  
sessions the father of the bastard desired to have the keeping of the child,  
and that the payment of the 2*s.* *per* week should cease, which the second  
sessions ordered. Motion was made to quash this last order of sessions,  
because in this case they had no jurisdiction. If an order of bastardy be  
made by two justices, then an appeal lies to the sessions; but where an  
original order is made at the sessions, there can be no appeal to another  
sessions, which deprives the party of a means to examine the first judg-  
ment.

ment. Now the *court held*, that the second sessions had no authority to order the subtraction of the two shillings a week, for it was no security to the parish; indeed this order was quashed; because it was made out of time three years after appeal, therefore justices had no jurisdiction.

On a motion to quash an order of bastardy, it was resolved, that if the father run away, and returned, though fourteen years after, yet an order to fix the child on him is good notwithstanding the statute of 13 & 14 *Car. 2. c. 12.* (See page 322.) gives a power to justices to make an adjudication behind his back, and to charge his effects, for there is no statute of limitation as to these cases; nor is there one instance where justices have been restrained. An order to disburse the parish charges they have been at since the birth of the child, is good even for those charges the parish is at, subsequent to his age of years. It must appear in what parish the child was born, and that the birth was in that parish in whose aid the order is made. It is not necessary to fix the day of his birth in the order. It is enough to say in the order, that the child is a bastard, without mentioning the state of the woman, whether single, &c. Security to indemnify the parish is proper. Security shall not be given for the performance of an order, till contempt of the first order.

An order of bastardy made by two justices of the borough of *Richmond* in *Yorkshire* was quashed for want of *quorum unus*: though 3 *Car. 1. c. 5.* was insisted on, where justices in precincts have power to execute the 18 *Eliz. c. 3.* as justices in the county do; which, *per curiam*, must be in the same manner. *Quære tamen*, so many charters have no *quorum*.—Many orders have been formerly quashed, for want of setting forth that one of the justices was of the *quorum*; but now by the statute 26 *Geo. 2. c. 27.* no order shall be quashed for that defect only.—See stat. 7 *Geo. 3. c. 21.* under title *Apprentices*, in page 111.

Two justices made an order, reciting that the defendant had been charged with being the father of a bastard child, and that upon examination into the matter, they were of opinion he was not so; and do therefore adjudge he be acquitted thereof. And the court upon consideration were all of opinion; that the justices had gone too far; for their whole authority is under 18 *El. c. 3.* whereby they are only impowered to take order for the relief of the parish, and punishment of the offender; but have no power to acquit the party, or convict him finally: which appears likewise from their proceedings being in *English*, where they are not required to set out the evidence, or shew a summons. The sessions indeed on 3 *Car. 1. c. 4. sess. 15.* may make a final order; and after a man is discharged by one sessions, a subsequent sessions cannot take it up again, as was held *Mich. 13 Geo. 1. Rex v. Tenant.* And it would be greatly inconvenient, the justices should have such a power; because the parish cannot appeal: the defendant indeed may, not by virtue of express words, but in consequence of the clause about giving security to abide the order of sessions, if the party does not submit to the order of two justices. And though a man may hereby be liable to be harassed in being carried before several justices, that is a less evil than the other: and besides, this court is open,

Order of bastardy charges the father, though he has been runaway 14 years. 1 *Sess. C. 83.* Mich. 1 *Geo. 1.* King against Miles.

Before stat. 26 *Geo. 2. c. 27.* there must have been a *quorum* in an order of bastardy by borough justices. 2 *Stran. 974.* East. 7 *G. 2.* Rex v. Heflop.

Two justices cannot acquit a man charged with a bastard. 2 *Stran. 1050.* Trin. 9 *G. 2.* Rex v. Jenkins.

if any thing should be done to the manifest oppression of the party. The order was quashed.

A bastard is within the statute of P. & M. The court granted an information against the defendants, for taking away a natural daughter under sixteen, under the care of her putative father; being of opinion, it was within the third section of stat. 4 & 5 P. & M. c. 8.

A bastard is intended to be born where the order states him to be baptized. An order of bastardy stated, that the woman was *delivered of a child baptized in the parish of A.* and it was objected, that this does not import it to be born there, which is the only circumstance to warrant the parish's applying for relief. But the court said, that by a reasonable construction it may be so understood, and confirmed the order.

2 Stran. 1166.

East. 15 G. 2. Rex v. Moravia.

Bastard of a certificate person is settled where born. chiefly on the certificate's being conclusive to the parish which gave it, and certified two persons as man and wife; it now came under debate again, and was determined, that the bastard of a certificate person is settled where born, and is not *a child* to be sent back within the meaning of the statute. 2 Stran. 1168. Trin. 15 Geo. 2. Between the parishes of Lydlynch and Hilton.

When a wife marries a second husband, and it is found the first had no access to her for a long time, the children of the second marriage are bastards, and the wife's settlement where the first husband's was. Order of sessions for the removal of a wife and three children from the parish of St. Andrew to the parish of St. Brides, setting forth, that *A.* about twenty-three years since married *B.* and lived with her five years in the parish of St. Brides, and had by her four children, two whereof were dead, and the other two provided for. That at the end of five years he went away from her, and married another woman, with whom he lived somewhere in *England*; but that he never saw his first wife *B.* from the time of his going away. *B.* after the separation (having heard nothing for a long time of *A.*) married a second husband, by whom she had eight children in the parish of St. Andrew, who all went by the name of the second husband; five of them are dead, and the other three survive. And the sessions presuming that the second marriage of the wife is void *ab initio*, adjudge, that her settlement, and that of her three children, is in the parish of St. Brides, where the first husband lived, as deeming the children the illegitimate issue of the first marriage. The court quashed the order as to the children, and confirmed it as to the wife. First, because the second marriage, and living with the second husband in St. Andrew's was void *ab initio*; and therefore the place of her settlement was where the first husband lived. Secondly, It being adjudged that the first husband had no access for seventeen years, no presumption shall be admitted but that these are the children of the second marriage; and they not being born in the parish of St. Brides, nor ever having inhabited there forty days, can have no settlement in St. Brides. 1 Roll. Abr. 358. pl. 1. 8. pl. 4, 5. Brañ. lib. 5. fol. 417. Co. Litt. 123. b. 2 Roll. Abr. 356. Cro. Jac. 541. Fleta, lib. 1. cap. 15. 4, 5. Brañon, lib. 1. c. 9. 4. Co. Litt.

*Litt.* 244. *a.* *Salk.* 123, 483. 7 *H.* 4. 9. All which cases were quoted to prove that improbability will bastardize the issue, and therefore it was argued *a fortiori*, that impossibility, which was found in this case, would bastardize also.

The order of bastardy was made at sessions (which was admitted to have Where an original jurisdiction), and Mr. *Denton* objected, that it was not said the defendant was ever summoned or appeared, and natural justice required that he should at least have an opportunity to defend himself. *C. J.* I believe these orders made originally at sessions are very rare, the usual way being to bring the matter before the sessions by way of appeal from the order of two justices. Now if it should be taken that the order of two justices will be well enough without their shewing a summons or appearance; yet I think this case will fall under a very different consideration. For in the other case the party has an opportunity to relieve himself by appeal, whereas upon an original order at sessions he can have no opportunity to bring the matter to a further examination; so that it is but a lewd woman's going behind his back and swearing a bastard upon him, by which means the most innocent man in the world may be condemned. In the case of the *Queen v. Simpson*, it was long debated, whether there ought not to have been a personal appearance of the deer-stealer; at last indeed it was determined, that a summons was sufficient, but it was never offered to be supported upon the foot of not shewing a summons. So far from it, that exceptions were taken to the manner of the summons, and the court delivered a special opinion as to them. *Lord Raym.* 1406. *Eyre J.* (*absente Powys*): It not appearing this order was made in the absence of the party, I think we must take it to be a regular proceeding. And so it was held in the case of the *King v. Peckham*, *Carth.* 406. The court said, where a summons was necessary, they would presume there was one, unless the contrary appeared, for all jurisdictions are presumed *prima facie* to act according to law. *Fortescue J.* It is certain that natural justice requires that no man shall be condemned without notice, for which reason I think the order will be good, because it does not appear to us that he had no notice: Are we to suppose the sessions have proceeded contrary to right and justice, and that too in a case where they have undoubted jurisdiction? in the case of servants wages the jurisdiction is given only in husbandry, and yet orders have been held good, where it did not appear the service was in husbandry, for the court said they would intend it so, unless the contrary appeared. *Salk.* 442. *C. J.* I do not see to what purpose we exercise a superintendancy over all inferior jurisdictions, unless it be to inspect their proceedings, and see whether they are regular or not. I have often heard it said, that nothing shall be presumed one way or the other in an inferior jurisdiction. And as to the case of wages, it was always wondered at, and in my lord *Parker's* time it was actually contradicted in the case of the *King v. Helling*, *Adjournatur.* *Trin.* 12 *Geo.* it was moved and confirmed without opposition.

Where a woman with child of a bastard is removed from A. to B. and privately returns to A. and is there delivered, the settlement of the bastard is in B. 1 Stran. 476. Mich. 8 Geo. 1 between the parishes of Landinaboe and Much Birch.

Order for removal of a female bastard child from *Landinaboe* to *Much Birch*, wherein the fact is stated specially that *Mary Wells* had been lately removed from the parish of *Landinaboe* to *Much Birch* afore said, being the place of her legal settlement; and that soon after, she of her own accord did secretly return to the parish of *L.* from which she was removed, and has been there since delivered of a female bastard child, which at the time of her removal she went with: And the justices send the bastard to *M.* the settlement of the mother. Mr. *Fazakerley* moved to quash the order, upon the general ground, that a bastard is settled at the place of its birth. Which was opposed by *Strange*, who cited *Trin. 1 Geo.* between the parishes of *Tottenhoe* and *Newton Longville*, where a bastard born at *A.* pending an illegal order of removal, was sent back with the mother upon reversal, and adjudged that the bastard should follow the settlement of the mother. So is *Salk. 474, 532. 2 Bulst. 349. Et per curiam*, (absente *C. J.*) That case will govern this, and therefore the order must be confirmed.

*N. B.* This case, says Sir *John Strange*, was never well considered, for it went off without any debate, upon the answer given upon the cases which I cited, and which seem to differ widely from the present case; for those cases were all adjudged upon the apparent fraud, in illegally removing a woman big with child of a bastard, and lest the parish should take advantage by their own wrong: but in the present case, it is stated that she returned of her own accord, which makes it no more than the common case of a bastard born in the parish of *A.* when the mother is settled in another parish; which settlement of the mother was never thought to be the settlement of the bastard. And I do not see that it makes any difference, that she returned to the parish from whence she was removed, any more than if she had rambled into any other parish.

Bastard chargeable only where born. 1 Stran. 644. Mich. 12 Geo. 1. Rex v. Warne.

Indictment for taking a bastard child born out of the parish of *A.* and bringing it into that parish, and there keeping it privately without notice to the churchwardens, and with intent to charge the parish. The court quashed the indictment, because it appeared, the parish could not be burthened, the bastard being born out of the parish of *A.*

The sex of the bastard must be specified in an order. Where two justices have made an order, the sessions have no jurisdiction, but upon appeal. 1 Stran. 503. Hil. 8 Geo. 1. Rex v. England.

Two orders of bastardy were returned, one made by two justices, and another original order made at sessions; and now both were quashed. The order of two justices, because the sex of the bastard, or the name of it, were not mentioned, only a certain bastard child born of the body of *A.*; and the order of sessions, because there being an order of two justices before, the sessions had no jurisdiction but upon appeal.

After defendant is discharged at sessions, a new order of bastardy cannot be made. 2 Stran. 716. Mich. 13 Geo. 1. Rex v. Tenant.

Upon an order of bastardy the defendant appealed to the sessions, where upon a full hearing he was discharged: afterwards the same justices make a new order upon him. And *Lee* moved to quash it, the defendant being by the former order of sessions absolutely discharged. 1 Ven. 59. Cro. Car. 350. And of that opinion was the court, and quashed the last order.

An order of bastardy was made, to pay so much weekly, till the child was nine years old, if it should so long live. *Et per cur'*, It is a good order, for we cannot intend it able to provide for itself sooner.

Order to provide for bastard till nine, good. 2 Stran. 738. Mich. 1 Geo. 2. Rex v. Street.

Upon an order of bastardy it was stated, that the husband had been absent six years, and that during his absence the defendant had had carnal knowledge of the wife, and therefore they adjudged him to be the putative father. *Et per curiam*, That order must be quashed, for his lying with her is not a sufficient reason to infer him the father of this child: and though the justices need not shew the grounds they go upon, yet if they do, and it appears no sufficient ground, their order will be bad.

That the husband was absent six years, and defendant had knowledge of the wife, is no good ground for order of bastardy. 2 Stran. 811. Trin. 2 Geo. 2. Rex v. Browne.

Upon an order made thirty years ago, on the parish of *Budworth*, for maintenance of a bastard child born in the township of *Nether Dumply* within that parish, which order was now removed before the court by *Certiorari*. It was held, first that an order made upon the overseers of any parish by two justices, for raising a sum towards the maintenance of a bastard or poor person, does not determine the settlement of that person in that parish, for the right of settlement is not contested, but presumed. 2dly, That the clause in the statute of the 13 & 14 Car. 2. cap. 12. which provides, that distinct townships of large parishes in the northern countries shall respectively provide for their poor, under the penalty mentioned in the 43 Eliz. c. 2. must be understood with respect to the maintenance of poor and impotent persons, and not with respect to bastards who are provided for by other statutes. But if a bastard be grown up, and by accident grow impotent, he may be relieved as a poor person within that statute.

Order of maintenance does not determine the settlement of a bastard. 1 Salk. 123. Hil. 5 Ann. B. R. between the parish of Budworth and township of Dumply in Lancr.

*A.* was brought to bed of a female bastard child in the village of *Church* near *Canterbury*, and charged *Richard Jenkins* with being the father of the child: And now two justices of peace made an order, which concluded thus: And on hearing what was alledged by counsel on both sides, we do hereby adjudge that the said *Richard Jenkins* is not the reputed father of the said female bastard child, born of the body of the said *A.* And we do acquit and discharge him of and from the same.— This order being removed up here, the only material exception taken to it by *Knowler*, was, that by the conclusion of this order, the justices have debarred all other justices of peace from the power of re-examining this matter, which these two justices have no right to do; and therefore prayed it might be quashed. It was argued on the other side, by *Hussey and Walker*, that it was as reasonable the two justices have power to acquit, as well as to condemn a man. That the sessions had no original jurisdiction of bastardy by 18th of *Eliz.* but it was given them by 3 Car. 1. by a virtual reference only to 18 *Eliz.* And that it has been held that the sessions has a power, in case of bastardy, to make a final order of discharge and acquittal, (*Slater's case*, Cro. Car. 470.) and therefore it seemed to be a right rule of construction, that the 18 *Eliz.* (which act first gave the justices out of sessions, the examination of bastardy) should give them as great a power as was given the sessions by 3 Car. 1.

Two justices, on application to them out of sessions, on hearing all parties, adjudged that *A.* is not the reputed father of the bastard, charged upon him by the oath of the woman, but held by the court, that this would not screen *A.* from being charged with an order by other two justices. MS. Rep. in B. R. in time of lord Hardwicke.

East. 9 Geo.  
2. Rex v.  
Jenkins.

since that power was allowed not to be given them expressly by the act, but by the reference and relation to the 18 *Eliz.*—Or supposing the two justices have no such power, then that the words are to be rejected, as surplusage, or to be interpreted so as to come within the power they have: which is to discharge him from the prosecution before them. The court conceived a great doubt on it, and ordered it to stand for the judgment of the court next term; for *per chief justice* (lord *Hardwicke*) it will be very hard on a man, in case he is liable to be turned over to the examination of *every* two justices in the county. And so on the contrary, there may some inconveniency arise; For in case two justices of peace can, by their order, discharge a man from any further prosecution, either by *other* justices, or by the sessions; a man may by collusion get himself carried before any two justices who are his friends, and so get clear from any future examination. Adjourned till the following term, *viz. Trin. 10 Geo. 2.* When the chief justice (lord *Hardwicke*) delivered the opinion of the court in this manner: The only question in this case is, whether the justices of peace *out of sessions* can make any *final* order of acquittal, or conviction, in the case of bastardy; and we are all of opinion that they cannot make such an order. The stat. 18 *Eliz. c. 3.* is the only stat. on which the two justices of peace found their power, in relation to bastard children. The words of which act are upon *examination of the cause and circumstances, they shall and may, by their direction, take, order, &c.* Now the power given them by this act, is not a power to proceed, either to convict or to acquit the party, but by way of order (as there are many other statutes empowering two justices of the peace, to act in the like manner); wherefore the words of the act are, *they shall take order &c. as well, &c.* And as a consequence of these words, this act has been construed only to give them a power and authority to proceed only by way of order, and not of acquittal or conviction; which appears to be so from hence, that those orders have been returned up here in *English*, and not in *Latin*, which was always necessary to be done on convictions before the statute which required all proceedings to be in *English*; so neither is the evidence set out on them; nor is it necessary to set forth in them that the party was summoned; both which are necessary in convictions. But these orders have always been held to be good, if it follows only the words of the stat. *viz. That upon examination of the cause and circumstances, they order so and so*; which would certainly be wrong in a conviction: the question then is, what words there are in this statute to make this order, it being neither for the punishment of the party, nor for the relief of the parish. If this had been an order made at the sessions, as it might have been by 3 *Car. c. 4. sect. 15.* Then I allow the justices might have made such an order of discharge. And it was said that, by the same parity of reason, two justices might make such order, the stat. 3 *Car. 1.* having words of reference to stat. 18 *Eliz.* this objection at first had some weight with me: But on considering the following cases I think that way of arguing is not conclusive, *viz. Cro. Car. 407, 341, 350, 1. M. 13 C. 1. Rex & Tenant*, which was this: Two justices made an order to charge the defendant with the maintenance of a bastard child, who appealed to the sessions,

essions, who discharged the original order. Then two justices make another order to charge him; and that last order being removed up here, was held to be void, and was quashed: and the reason was, because the sessions had an absolute power, *finally* to charge or acquit him. Now, in these 3 cases, the order appeared to be made by the sessions, who are the dernier resort in those instances. And therefore their determinations could not be examined over again, not even by themselves, much less by two justices of the peace; and it would be absurd to maintain that it could; because then this second order made by two justices might be again examined by the sessions, so that there would be no end of it. If we should determine that the two justices had such a power of giving a final discharge to the party, we should make a very unequal construction of the act; for in case the two justices should make such an order, the parish cannot appeal, (For strictly speaking, no appeal is given to the sessions, by either party, but consequentially only on the behalf of the person charged, upon the account of his being bound over to appear at the next general quarter-sessions, which gives the sessions a power of re-examining the case); so that I say, in that case, the parish cannot appeal, though the party, in case of his being charged, would have that privilege. So that if at any time the person could get any two justices of peace, to make an order of discharge, the parish could have no relief.—It was objected, that if the two justices had not such a power, there would be a great inconveniency attending the party accused, being liable to be carried round to every two justices in the county. If this is an inconvenience, so is there likewise an inconvenience attending the other construction, as I have shewn; and when one inconvenience meets another, the law must take place. But this is not a greater inconvenience than what attends any other case, as that of applications for removals, and the like; where, if one set of justices will not do it, another may. But in all these cases, if there should be any abuses committed, by hurrying the parties unreasonably from one set of justices to another, the parties may have the same remedy, as in all other cases, where the proceedings of law are abused. Therefore upon the whole, we are all of opinion, that the order ought to be quashed.

Mr. *Montague* moved to quash an order for maintaining a bastard child: Upon motion first, because it was not said the child was likely to become chargeable: and 2dly, the defendant was ordered to pay 18 *d.* per week *indefinitely*, without limiting any certain time: *Shower* answered, that no order relating to a bastard child can be quashed, except the reputed father be present in court, *quod curia concessit*; however this being a hard case, a rule was made to shew cause; and being stirred again the next term, the court would not quash it, till the reputed father came into court, and the first exception was overruled; for it is self-evident that every bastard child is likely to become chargeable.

An order made by two justices of the peace in *Sussex*, adjudged *Beard* to be the father of a bastard child, which was quashed, because it appeared thereby, that the examination of the woman was by *one* justice only, tho' the ordering part thereof was said to be made by both; and *Beard* was bound over to the next sessions.

to quash an order of bastardy, the reputed father must be present in court.  
2 Salk. 475.  
Hil. 8 Wil.  
3. Rex v. Mathews.

Order of bastardy ill, because examination by one justice only.  
2 Salk. 478.  
Hil. 8 Will 3:  
The Rex v. Beard.



Money for maintenance of a bastard may be ordered to be paid to the overseers. 1 Silke. 122. Trin. 4 Ann. B. R. Regina v. Weston. Order quashed because the words of adjudication were in the singular number instead of the plural. By 13 Eliz. c. 3. sessions must proceed on recognizance. By 3 Car. 1. may commit.

The defendant being adjudged the father of a bastard by two justices, exception was taken to the order: 1st, That he was ordered to pay so much weekly to the overseers of the parish; *sed non alloc'*. For, as before the institution of overseers, the justices might in these cases order the money to be paid to two or three of the inhabitants, so now they may to the overseers. The second exception was, that it was said, We the said two justices *doth adjudge, &c.* which is the singular, instead of *do*, and 1 Cro. 489. was cited to make this good. That was an indictment on 3 H. 7. c. 2. against *Fulwood* and others, *quod ipsi cepit for ceperunt*; but the roll of that case being searched, which is in *Hill. 13 Car. 1. rot. 24. inter placita coron.* the indictment was *ceperunt*, and not *cepit*; wherefore this order was quashed. *Note*, this cause came into court *Pasc. 4 Ann.* by *habeas corpus*, and the case was, that *Weston* had appealed to the sessions where the order was confirmed, and he committed for not paying the money ordered; and Mr. King took this exception to the return of the *habeas corpus*, viz. That the sessions should have proceeded against him upon his recognizance. *Et per Holt C. J.* If they proceed on the 18 *Eliz.* the sessions has no power to commit, but to proceed on his recognizance: but if on the 3 *Car. 1.* the sessions may commit as the two justices might have done; that is, unless the party put in security to perform the order, or to appear at the next sessions.

If a man is adjudged by two justices the reputed father of a bastard, and ordered to pay, and on appeal the order is confirmed, the justices at the sessions cannot commit for non payment, but must proceed on the recognizance taken by the two justices. Lord Raym. 1157.

The defendant was adjudged by two justices to be the reputed father of a bastard child, pursuant to the statute of 18 *Eliz.* and ordered to pay, &c. and upon appeal to the sessions in *Hertfordshire* the order was confirmed, and for not paying the money ordered, the defendant was committed, and was now brought into court upon a *habeas corpus*; and several exceptions were taken to the order of the two justices, and after they had been several times stirred, Mr. King took an exception to the return of the *habeas corpus*, that this was not a sufficient cause of commitment, but that in case of refusal to obey the order, the justices ought to have proceeded against the defendant upon his recognizance; which is the method prescribed by the statute, the words of which are, "That every person making default in not performing the order of the two justices, shall be committed to ward in the common gaol, there to remain without bail or mainprize, except they shall put in sufficient security to perform the said order, or else personally to appear at the next general sessions of the peace to be holden in that county where such order shall be taken; and also to abide such order, as the said justices of the peace, or the major part of them, then and there shall take in that behalf (if they then and there shall take any); and that if at the said sessions the said justices shall take no other order, then to abide the order before made." So that the two justices only have the power to commit, if the party refuse to give security; but the sessions have no power to commit: but in case the person will not perform their order, they must go against his security. And for this reason in the like case between the King and *Hammond*, 2 *Bulstr.* 341. where the defendant was committed at the sessions, after a bond given to the two justices pursuant to the statute, he was discharged.

*Holt* chief justice : Where the sessions proceed by way of appeal, it is by virtue of the power given them by the 18 *Eliz.* and by that statute they have no power to commit, but the provision that is made by that statute, to compel the party's obedience to their orders, is by a recognizance, which is to be taken by the two justices that made the order; and if the party will not give such a recognizance, they have power to commit him. Indeed if the sessions proceed originally by 3 *Car.* 1. they may commit for not performing their order. And he said, it was not material in this case, whether the two justices had taken any recognizance of *West* or no (which *Mr. Eyre* objected did not appear to have been done, and so would distinguish this from *Hammond's* case); for if they had not done it, it was a neglect in them; but the sessions would not thereby have a power to commit, when no such power is given them by the statute.

Original proceedings at sessions.

*Powell* justice : The two justices power to commit is only conditional, except the party put in sufficient security, &c. as by the act.

Upon this exception the defendant was discharged; and as to the order, *curia advisare* till next term, and *West* was bound by recognizance to appear in the *King's Bench* the first day of next term.

Several orders made by the justices of peace in *Wilts.* against the defendant, for being the putative father of a bastard child, were removed into the *King's Bench* by *certiorari*. And *Mr. Broderick* moved, to quash one of them, which was made by the justices, that the churchwardens and overseers of the poor should seize of the defendant's goods, what they should judge proper, to secure the parish from the maintenance of the child; because by the 13 & 14 *Car.* 2. cap. 12. (See page 322.) they have only authority, to make an order to empower the churchwardens and overseers, &c. to seize, what the justices should judge proper, and not what the churchwardens, &c. should judge proper. And for this reason it was quashed. Then an exception was taken to the original order, because it ordered, that the defendant should give security for payment of the sum by them imposed for the maintenance of the child, when it did appear, that the defendant had disobeyed the order in point of payment. And by 18 *El.* cap. 3. an order for security cannot be made, till after contempt. And for this reason the order was quashed as to that part, and was confirmed as to the residue. And *per curiam*, When an order is confirmed in this court, an attachment lies for non-performance of it; and therefore this court will not take security of the party for performance of it. But if the original order had been at the sessions, not removed hither, the court would have taken security of him, to appear there.

Order to seize goods of the reputed father of a bastard, &c. Lord Raym. 853. East. 2 Ann. Regina v. Chaffey.

Order cannot be made for security till after contempt.

See stat. 21 *Jac.* 1. c. 27. in page 321. In the construction of which statute it hath been adjudged, that in order to convict a woman by force of this statute, there is no need that the indictment be drawn specially, or conclude against the form of the statute; but that it is the better way to set forth only that the defendant, brought forth a living male child, which male child being then and there living was by the law of England born a bastard, and then to go on in the ordinary way to shew that she murdered him, &c. against the peace, &c. for the statute doth not make a new offence, but only

Concealing the death of a bastard child.

only makes such concealment an undeniable evidence of murder. Also it hath been agreed, that where a woman appears to have endeavoured to conceal the death of such child within the statute, there is no need of any proof that the child was born alive, or that there were any signs of hurt upon the body, but it shall be undeniably taken that the child was born alive and murdered by the mother. But it hath been adjudged, that where a woman lay in a chamber by herself, and went to bed without pain, and waked in the night, and knocked for help, but could get none, and was delivered of a child and put it in a trunk, and did not discover it till the following night, yet she was not within the statute, because she knocked for help. Also it hath been agreed, that if a woman confess herself with child before-hand, and afterwards be surpris'd and delivered, nobody being with her, she is not within the statute, because there was no intent of concealment. And therefore in such cases it must appear by signs of hurt upon the body, or some other way, that the child was born alive. 2 *Hawk. P. C.* 438. cites *Kely.* 32, 33.

Giving a potion to cause abortion.

If a woman be with child, and any gives her a potion to destroy the child within her, and she take it, and it works so strongly that it kills her, this is murder; for it was not given to cure her of a disease, but unlawfully to destroy her child within her; and therefore he that gives her a potion to this end, must take the hazard, and if it kills the mother, it is murder, and so ruled before me, says lord *Hale*, at the assizes at *Bury* in the year 1670. 1 *Hale's H. P. C.* 429, 430.

If a woman be quick or great with child, if she take, or another give her any potion to make an abortion, or if a man strike her, whereby the child within her is killed, it is not murder nor manslaughter by the law of *England*, because it is not yet *in rerum natura*, tho' it be a great crime, and by the judicial law of *Moses* (*Exod. xxi. 22.*) was punishable with death; nor can it legally be known, whether it were killed or not, 22 *E. 3. Coron.* 263. So it is, if after such child were born alive, and baptized, and after die of the stroke given to the mother, this is not homicide. 1 *Hale's H. P. C.* 433. cites 1 *E. 3. 23. b. Coron.* 146.

But if a man procure a woman with child to destroy her infant, when born, and the child is born, and the woman in pursuance of that procurement kill the infant, this is murder in the mother, and the procurer, is accessary to murder, if absent, and this whether the child were baptized or not. 1 *Hale's H. P. C.* 433. cites 7 *Co. Rep.* 9. *Dyer* 186.

*For the settlements of bastard children, see Poor.*

**Bent.**

## Bent.

STAT. 15 Geo. 2. c. 33. [A. D. 1742.] made, among other purposes, “ for the more effectual preventing the cutting of starr or bent.”

SECT. 6. “ And whereas upon the north-west coasts of this kingdom, and especially in the county palatine of *Lancaster*, the sea is bounded, and the adjacent lands are prevented from being overflowed by large sand-hills, which are composed of such loose sand, that in dry weather, when any violent strong west winds happen to blow, the same is carried away, and thrown upon the adjacent lands, not only to the damage thereof, but also to the great terror and danger of the inhabitants, who are thereby exposed to the inundation of the sea: And whereas it has been found by experience, that the best way to prevent the said hills from being blown away as aforesaid, is to plant them with a certain rush or shrub called starr or bent, which proves an effectual method for keeping the same firm and solid, and which the owners of the said lands are at great costs and charges in yearly setting and planting for that purpose: And whereas it frequently happens, that many idle and disorderly persons, residing near the said coasts, do unlawfully and maliciously in the night-time, as well as by day, cut, pull up, and carry away the starr or bent so planted as aforesaid, and instead of working in an honest manner for the maintenance and support of their families, do privately sell and dispose of the said starr or bent, for making of matts, brushes, and brooms or besoms, and thereby the said hills are rendred so loose and open, that the same are often blown upon the adjacent lands, which are covered over therewith in such manner as to destroy the corn, grass and herbage thereof, and expose the same to inundations, to the great loss and damage of the owners and occupiers of the said lands: For remedy whereof, be it enacted by the authority aforesaid, That if any person or persons shall, at any time or times, from and after the twenty-ninth day of *September* one thousand seven hundred and forty-two, by day or night, without the consent of the lord or owner of such starr or bent hills, cut, pull up or carry away any starr or bent which already is, or at any time or times hereafter shall be planted or set on the said hills or banks, on the north-west coasts of *England*, in order to preserve and to prevent the same from being blown upon the said adjacent lands, it shall and may be lawful to and for any one or more of his majesty's justices of the peace of the county, riding, city, town corporate, liberty or division, where such starr or bent shall be cut, pulled up or carried away, and such justice or justices is and are hereby empowered, upon complaint or information upon oath made of such offence (which oath such justice or justices is and are hereby authorized to administer), to summon the party or parties so complained of, and in default of appearance thereon, to issue out his or their warrant or warrants to apprehend and bring before him or them the person or persons so accused or com-

Penalty for  
cutting starr  
or bent from  
the sand-hills.

plained of; and upon proof thereof made, either by confession of the party or parties so accused, or upon the oath of one or more credible witnesses or witnesses, to convict the offender or offenders; and every person so offending, and being thereof convicted as aforesaid, shall forfeit and pay the sum of twenty shillings; one moiety thereof to the informer, and the other moiety to the lord or owner of such starr, bent, or sand-hills, the same to be levied by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of such justice or justices, together with the charges of such distress and sale, rendering the overplus, if any be, to the owner or owners thereof; and for want of sufficient distress, the said justice or justices are hereby required to commit the person or persons so convicted as aforesaid, to the house of correction, there to remain and be kept to hard labour for the space of three months; and if any person or persons so convicted, shall afterwards be guilty of a second offence, and thereof lawfully convicted by such justice or justices, either by confession of the party or parties, or upon the oath of one or more credible witness or witnesses, such person or persons shall be committed to the house of correction for the space of one year, there to be whipt and kept to hard labour.

Penalty on  
having starr  
or bent in  
custody.

*Sec. 7.* " And be it further enacted by the authority aforesaid, That if any starr or bent shall be found in the custody or possession of any person or persons within five miles of any such starr, bent or sand-hills as aforesaid, such person or persons being convicted thereof before one or more such justice or justices in manner aforesaid, shall be deemed, adjudged and taken to be the cutter and puller of such starr or bent from such sand-hills, and shall forfeit and pay the sum of twenty shillings; one moiety thereof to the lord or owner of such starr, bent or sand-hills, the same to be levied in manner aforesaid, by distress and sale of the offender's goods and chattels, together with the charges of such distress and sale, rendering the overplus, if any, to the owner or owners thereof; and for want of sufficient distress, such person or persons shall be committed, in manner aforesaid, to the house of correction, there to remain, and be kept to hard labour for the space of three months.

Proviso.

*Sec. 8.* " Provided always, That nothing in this act contained shall extend, or be construed to extend, to prohibit or restrain any person or persons from the exercise or enjoyment of any ancient prescriptive right, to cut starr or bent upon the sea coasts in the county of *Cumberland*."

**Black=**

## Black-Act.

STAT. 9 Geo. 1. c. 22. [*A. D. 1722. intituled*] “ An act for the more effectual punishing wicked and evil-disposed persons going armed in disguise, and doing injuries and violences to the persons and properties of his majesty’s subjects, and for the more speedy bringing the offenders to justice.”

*Sett.* 1. “ Whereas several ill-designing and disorderly persons have of late associated themselves under the name of *Blacks*, and entred into confederacies to support and assist one another in stealing and destroying of deer, robbing of warrens and fish-ponds, cutting down plantations of trees, and other illegal practices, and have, in great numbers, armed with swords, fire-arms, and other offensive weapons, several of them with their faces blacked, or in disguised habits, unlawfully hunted in forests belonging to his majesty, and in the parks of divers of his majesty’s subjects, and destroyed, killed, and carried away the deer, robbed warrens, rivers, and fish-ponds, and cut down plantations of trees; and have likewise solicited several of his majesty’s subjects, with promises of money, or other rewards, to join with them, and have sent letters, in fictitious names, to several persons, demanding venison, and money, and threatening some great violence, if such their unlawful demands should be refused, or if they should be interrupted in, or prosecuted for such their wicked practices, and have actually done great damage to several persons, who have either refused to comply with such demands, or have endeavoured to bring them to justice, to the great terror of his majesty’s peaceable subjects: For the preventing which wicked and unlawful practices, Be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, That if any person or persons, from and after the first day of *June* in the year of our lord one thousand seven hundred and twenty-three, being armed with swords, fire-arms, or other offensive weapons, and having his or their faces blacked, or being otherwise disguised, shall appear in any forest, chase, park, paddock, or grounds inclosed with any wall, pale, or other fence, wherein any deer have been or shall be usually kept, or in any warren or place where hares or conies have been or shall be usually kept, or in any high road, open heath, common, or down; or shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, or unlawfully rob any warren or place where conies or hares are usually kept; or shall unlawfully steal or take away any fish out of any river or pond; or if any person or persons, from and after the said first day of *June*, shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, fed or kept in any places in any of his majesty’s forests or chases, which are or shall be inclosed with pales, rails, or other fences, or in any park,

Continued by  
12 Geo. 1.  
c. 30. &c.  
explained and  
amended by  
27 Geo. 2.  
c. 15. and  
made perpetual by 31 G.  
2. c. 42.  
(Offences against this act  
are excepted  
out of the ge-  
neral pardon,  
20 Geo. 2.  
c. 52.)

Persons disguised and in arms appearing in forest, &c. and killing deer, &c. deemed tenants.

Sending letters without a name, &c. and demanding money, &c. felony.

paddock, or grounds inclosed, where deer have been or shall be usually kept; or shall unlawfully and maliciously break down the head or mound of any fish-pond, whereby the fish shall be lost or destroyed; or shall unlawfully and maliciously kill, maim, or wound any cattle, or cut down or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter, or profit; or shall set fire to any house, barn, or out-house, or to any hovel, cock, mow, or stack of corn, straw, hay, or wood; or shall wilfully and maliciously shoot at any person in any dwelling-house, or other place; or shall knowingly send any letter, without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing; or shall forcibly rescue any person, being lawfully in custody of any officer or other person, for any of the offences before mentioned; or if any person or persons shall, by gift or promise of money, or other reward, procure any of his majesty's subjects to join him or them in any such unlawful act; every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

Such persons when so surrender themselves, &c.

*Sett.* 2. "And whereas, notwithstanding the laws now in force against the illegal practices above mentioned, and his majesty's royal proclamation of the second day of *February*, which was in the year of our lord one thousand seven hundred and twenty-two, notifying the same, many wicked and evil-disposed persons have, in open defiance thereof, been guilty of several of the offences before mentioned, to the great disturbance of the publick peace, and damage of divers of his majesty's good subjects; It is hereby enacted by the authority aforesaid, That all and every person and persons, who, since the second day of *February* in the year of our lord one thousand seven hundred and twenty-two, have committed or been guilty of any of the offences aforesaid, who shall not surrender him, her, or themselves, before the twenty-fourth day of *July* in the year of our lord one thousand seven hundred and twenty-three, to any of the justices of his majesty's court of *King's Bench*, or to any one of his majesty's justices of the peace, in and for the county where he, she, or they did commit such offence or offences, and voluntarily make a full confession thereof to such justice, and a true discovery upon his, her, or their oath or oaths, of the persons who were his, her, or their accomplices in any of the said offences, by giving a true account of their names, occupations, and places of abode, and to the best of his, her, or their knowledge or belief, discover where they may be found, in order to be brought to justice, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

Who intitled to a pardon.

*Sett.* 3. Provided nevertheless, that all and every person and persons, who have been guilty of any the offences aforesaid, and shall not be in lawful custody for such offence on the said first day of *June*, and shall surrender him, her, or themselves, on or before the said twenty-fourth day of *July*, as aforesaid, and shall make such confession and discovery, as aforesaid, shall by virtue of this be pardoned, acquitted, and discharged of

of and from the offences so by him, her, or them confessed, as aforesaid; any thing therein contained to the contrary in any wise notwithstanding.

*Set.* 4. And for the more easy and speedy bringing the offenders against this act to justice, be it enacted by the authority aforesaid, That if any person or persons shall be charged with being guilty of any of the offences aforesaid, before any two or more of his majesty's justices of the peace of the county where such offence or offences were or shall be committed, by information of one or more credible person or persons upon oath by him or them to be subscribed, such justices before whom such information shall be made, as aforesaid, shall forthwith certify under their hands and seals, and return such information to one of the principal secretaries of state of his majesty, his heirs or successors, who is hereby required to lay the same, as soon as conveniently may be, before his majesty, his heirs or successors, in his or their privy council; whereupon it shall and may be lawful for his majesty, his heirs, or successors, to make his or their order in his or their said privy council; thereby requiring and commanding such offender or offenders to surrender him or themselves, within the space of forty days, to any of his majesty's justices of the court of *King's Bench*, or to any one of his majesty's justices of the peace, to the end that he or they may be forthcoming, to answer the offence or offences wherewith he or they shall so stand charged, according to due course of law; which order shall be printed and published in the *London Gazette*, and shall be forthwith transmitted to the sheriff of the county where the offence shall be committed, and shall, within six days after the receipt thereof, be proclaimed by him, or his officers between the hours of ten in the morning, and two in the afternoon, in the market-places, upon the respective market-days, of two market-towns in the same county, near the place where such offence shall have been committed; and a true copy of such order shall be affixed upon some publick place in such market-towns; and in case such offender or offenders shall not surrender him or themselves, pursuant to such order of his majesty, his heirs or successors, to be made in council, as aforesaid, he or they, so neglecting or refusing to surrender him or themselves, as aforesaid, shall, from the day appointed for his or their surrender, as aforesaid, be adjudged, deemed, and taken to be convicted and attainted of felony, and shall suffer pains of death as in case of a person convicted and attainted by verdict and judgment of felony, without benefit of clergy; and that it shall be lawful to and for the court of *King's Bench*, or the justices of *Oyer and Terminer*, or general gaol delivery for the county, where the offence is sworn in such information to have been committed, upon producing to them such order in council, under the seal of the said council, to award execution against such offender and offenders, in such manner, as if he or they had been convicted and attainted in the said court of *King's Bench*, or before such justices of *Oyer and Terminer*, or general gaol delivery respectively.

Justices to return informations to a secretary of state, who is to lay the same before the king and council, who may make an order for their surrender.

Persons not surrendering themselves pursuant to such order, are deemed to be convicted, &c.

*Set.* 5. And be it enacted by the authority aforesaid, That all and every person and persons, who shall, after the time appointed, as aforesaid, for the surrender of any person or persons, so charged upon oath with any

Persons absconding them, &c. deemed felons.



the offences aforesaid, be expired, conceal, aid, abet or succour such person or persons, knowing him or them to have been so charged, as aforesaid, and to have been required to surrender him or themselves, by such order or orders, as aforesaid, being lawfully convicted thereof, shall be guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

Offenders apprehended within the time limited by order of council, shall be tried according to law.

*Sec. 6.* Provided nevertheless, and it is hereby declared and enacted, That nothing herein contained shall be construed to prevent or hinder any judge, justice of the peace, magistrate, officer, or minister of justice whatsoever, from taking, apprehending, and securing, such offender or offenders, against whom such information shall be given, and for requiring whose surrender, such order in council shall be made, as aforesaid, by the ordinary course of law; and in case such offender or offenders, against whom such information, and for requiring whose surrender, such order in council shall be made, as aforesaid, shall be taken and secured, in order to be brought to justice before the time shall be expired, within which he or they shall be required to surrender him or themselves, by such order in council, as aforesaid, that then in such case no further proceedings shall be had upon such order made in council against him or them so taken and secured, as aforesaid, but he or they shall be brought to trial by the due course of law; any thing herein before contained to the contrary in any wise notwithstanding.

Hundred chargeable for damage sustained in maiming cattle, &c.

*Sec. 7.* And be it enacted by the authority aforesaid, That from and after the first day of *June* one thousand seven hundred and twenty-three, the inhabitants of every hundred within that part of the kingdom of *Great Britain* called *England*, shall make full satisfaction and amends to all and every the person and persons, their executors and administrators, for the damages they shall have sustained or suffered by the killing or maiming of any cattle, cutting down or destroying any trees, or setting fire to any house, barn, or out-house, hovel, cock, mow, or stack of corn, straw, hay, or wood, which shall be committed or done by any offender or offenders against this act; and that every person and persons, who shall sustain damages by any of the offences last mentioned, shall be and are hereby enabled to sue for and recover such his or their damages, the sum to be recovered not exceeding the sum of two hundred pounds, against the inhabitants of the said hundred, who by this act shall be made liable to answer all or any part thereof; and that if such person or persons shall recover in such action, and sue execution against any of the said inhabitants, all other the inhabitants of the hundred, who by this act shall be made liable to all or any part of the said damage, shall be rateably and proportionably taxed, for and towards an equal contribution for the relief of such inhabitant, against whom such execution shall be had and levied; which tax shall be made, levied, and raised, by such ways and means, and in such manner and form, as is prescribed and mentioned for the levying and raising damages recovered against inhabitants of hundreds in cases of robberies, in and by an act, [intituled, An act for the following hue and cry] made in the twenty-seventh year of the reign of queen *Elizabeth*.

*Señ. 8.* Provided nevertheless, That no person or persons shall be enabled to recover any damages by virtue of this act, unless he or they, by themselves, or by their servants, within two days after such damage or injury done him or them by any such offender or offenders, as aforesaid, shall give notice of such offence done and committed unto some of the inhabitants of some town, village, or hamlet, near unto the place where any such fact shall be committed, and shall, within four days after such notice, give in his, her, or their examination upon oath, or the examination upon oath of his, her, or their servant or servants, that had the care of his or their houses, out-houses, corn, hay, straw, or wood, before any justice of the peace of the county, liberty, or division, where such fact shall be committed, inhabiting within the said hundred where the said fact shall happen to be committed, or near unto the same, whether he or they do know the person or persons, that committed such fact, or any of them; and if upon such examination it be confessed, that he or they do know the person or persons, that committed the said fact, or any of them, that then he or they so confessing, shall be bound by recognizance to prosecute such offender or offenders by indictment, or otherwise, according to the laws of this realm.

Persons injured to give notice within two days after the offence committed,

and to be examined within four days after notice, touching their knowledge of the offenders.

*Señ. 9.* Provided also, and be it further enacted by the authority aforesaid, That where any offence shall be committed against this act, and any one of the said offenders shall be apprehended, and lawfully convicted of such offence, within the space of six months after such offence committed, no hundred, or any inhabitants thereof, shall in any wise be subject or liable to make any satisfaction to the party injured, for the damages he shall have sustained; any thing in this act to the contrary notwithstanding.

Hundred not liable, if the offender is convicted within six months, &c.

*Señ. 10.* Provided also, That no person, who shall sustain any damage by reason of any offence to be committed by any offender contrary to this act, shall be hereby enabled to sue, or bring any action against any inhabitants of any hundred, where such offence shall be committed, except the party or parties sustaining such damage, shall commence his or their action or suit within one year next after such offence shall be committed.

Action to be commenced within a year after the offence.

*Señ. 11.* And for the better and more effectual discovery of the offenders above-mentioned, and bringing them to justice, Be it enacted by the authority aforesaid, That it shall and may be lawful to and for any justice of the peace, to issue his warrant to any constable, headborough, or other peace-officer, thereby authorizing such constable, headborough, or other peace-officer, to enter into any house, in order to search for venison, stolen or unlawfully taken, contrary to the several statutes against deer-stealers, in such manner, as by the laws of this realm such justice of the peace may issue his warrant to search for stolen goods.

Justices may issue warrants to search for stolen venison.

*Señ. 12.* And be it further enacted by the authority aforesaid, That if any person or persons shall apprehend, or cause to be convicted, any of the offenders above-mentioned, and shall be killed or wounded, so as to lose an eye, or the use of any limb, in apprehending or securing, or endeavouring to apprehend or secure any of the offenders above-mentioned, upon proof thereof made at the general quarter-sessions of the peace for the county, liberty, division or place, where the offence was or shall be committed, or the party killed, or receive such wound, by the person or persons

Persons killed or wounded in apprehending offenders, how to be rewarded.

persons so apprehending, and causing the said offender to be convicted, or the person or persons so wounded, or the executors or administrators of the party killed, the justices of the said sessions shall give a certificate thereof to such person or persons so wounded, or to the executors or administrators of the person or persons so killed, by which he or they shall be entitled to receive of the sheriff of the said county the sum of fifty pounds, to be allowed the said sheriff in passing his accounts in the Exchequer, which sum of fifty pounds the said sheriff is hereby required to pay within thirty days from the day on which the said certificate shall be produced and shewn to him, under the penalty of forfeiting the sum of ten pounds to the said person or persons to whom such certificate is given; for which said sum of ten pounds, as well as the said sum of fifty pounds, such person may and is hereby authorized to bring an action upon the case against such sheriff, as for money had and received to his or their use.

3 & 4 W. &  
M. c. 10.

Prosecutions  
may be com-  
menced with-  
in 3 years af-  
ter offence  
committ: e l.

Such offences  
may be tried  
in any county.

Attainder not  
to work cor-  
ruption of  
blood, &c.  
This act,  
where to be  
read.

*Seet. 13.* And whereas the shortness of the time, within which prosecutions for offences against the statute made in the third and fourth years of the reign of their late majesties king *William* and queen *Mary*, [intituled, An act for the more effectual discovery and punishment of deer-stealers,] are limited to be commenced, has been a great encouragement to offenders; Be it therefore enacted by the authority aforesaid, That any prosecution for any offence against the said statute, shall or may be commenced within three years, from the time of the offence committed, but not after.

*Seet. 14.* And for the better and more impartial trial of any indictment or information, which shall be found, commenced or prosecuted for any the offences committed against this act, Be it enacted by the authority aforesaid, That every offence, that shall be done or committed contrary to this act, shall and may be inquired of, examined, tried and determined in any county within that part of the kingdom of *Great Britain* called *England*, in such manner and form, as if the fact had been therein committed: Provided, that no attainder for any of the offences made felony by virtue of this act, shall make or work any corruption of blood, loss of dower, or forfeiture of lands or tenements, goods or chattels.

*Seet. 15.* And be it further enacted by the authority aforesaid, That this act shall be openly read at every quarter-sessions, and at every leet or law-day.

*Seet. 16.* And be it further enacted by the authority aforesaid, That this act shall continue in force from the first day of *June* one thousand seven hundred and twenty-three, for the space of three years, and from thence to the end of the then next session of parliament, and no longer. *Continued for five years by 12 Geo. 1. c. 30.—Made perpetual by 31 Geo. 2. c. 42.*

*Seet. 17.* And be it further enacted by the authority aforesaid, That if any venison, or skin of any deer, shall be found in the custody of any person or persons, and it shall appear that such person or persons bought such venison or skin of any one, who might be justly suspected to have unlawfully come by the same, and does not produce the party of whom he bought it, or prove upon oath the name and place of abode of such party, that

that then the person or persons, who bought the same, shall be convicted of such offence, by any one or more justice or justices of the peace, and shall be subject to the penalties inflicted for killing a deer, in and by the statute made in the third and fourth year of the reign of their late majesties king *William* and queen *Mary*, [intituled, An act for the more effectual discovery and punishment of deer-stealers.] 3 & 4 W. & M. c. 10.

**Stat. 6 Geo. 2. c. 37.** [*A. D. 1733.*] *Made, among other purposes,* “ To prevent the cutting or breaking down the bank of any river, or any sea bank, and to prevent the malicious cutting of hop-binds.”

**Sett. 5.** “ And be it further enacted by the authority aforesaid, That if any person or persons, from and after the twenty-fourth day of *June*, which shall be in the year of our lord one thousand seven hundred and thirty-three, and during the continuance of the last before mentioned act, shall unlawfully and maliciously break down, or cut down the bank or banks of any river, or any sea banks, whereby any lands shall be overflowed or damaged, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer such death as in cases of felony, without benefit of clergy. Maliciously destroying banks of rivers, &c. felony without clergy.

**Sett. 6.** “ And be it further enacted by the authority aforesaid, That if any person or persons, from and after the twenty-fourth day of *June* one thousand seven hundred and thirty-three, shall (during the continuance of the before mentioned act, intituled, An act for the more effectual punishing wicked and evil disposed persons, going armed in disguise, and doing injuries and violences to the persons and properties of his majesty's subjects, and for the more speedy bringing the offenders to justice;) unlawfully and maliciously cut any hop-binds growing on poles in any plantation of hops, every person or persons so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.” Maliciously cutting hop-binds felony without clergy. 9 Geo. 1. c. 22. Continued by 10 Geo. 2. c. 32. Made perpetual by 31 Geo. 2. c. 42.

**Stat. 27 Geo. 2. c. 15.** [*A. D. 1754. Intituled*] “ An act to explain and amend an act made in the ninth year of the reign of his late majesty king *George* the first, intituled, An act for the more effectual punishing wicked and evil-disposed persons going armed and disguised, and doing injuries and violences to the persons and properties of his majesty's subjects; and for the speedy bringing the offenders to justice.”

“ Whereas by an act made in the ninth year of the reign of his late majesty king *George* the first, intituled, An act for the more effectual punishing wicked and evil-disposed persons going armed and disguised, and doing injuries and violences to the persons and properties of his majesty's subjects; and for the speedy bringing the offenders to justice; it is amongst other things enacted, That if any person or persons, from and after the first of *June* in the year of our lord one thousand seven hundred and twenty-three, shall knowingly send any letter without any name subscribed thereto, or signed with a fictitious name, demanding money, venison or other valuable 9 Geo. 1. c. 22.

Persons convicted of sending threatening or incendiary letters,

or of rescuing persons in custody for such offences, to suffer death.

able thing, or shall forcibly rescue any person being lawfully in custody of any officer or other person, for any of the offences in the said act mentioned, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy: And whereas divers letters have been sent to several of his majesty's subjects, threatening their lives or burning their houses, which letters not demanding money, venison or any valuable effects, are not subject to the penalties of the said act: To prevent the like mischievous and iniquitous proceedings for the future, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person or persons, from and after the first day of *May* one thousand seven hundred and fifty-four, shall knowingly send any letter without any name subscribed thereto, or signed with a fictitious name or names, letter or letters, threatening to kill or murder any of his majesty's subject or subjects, or to burn their houses, out-houses, barns, stacks of corn or grain, hay or straw, though no money or venison or other valuable thing shall be demanded in or by such letter or letters; or shall forcibly rescue any person being lawfully in custody of any officer or other person for the said offence; every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy."

## Black Lead.

STAT. 25 *Geo.* 2. c. 10. [*A. D.* 1752. *Intituled*] "An act for the more effectual securing mines of black lead from theft and robbery."

"Whereas by experience it hath been found, that wad or black cawke, commonly called black lead, is and hath been necessary for divers useful purposes, and more particularly in the casting bomb shells, round shot, and cannon balls; and that such wad, black cawke, or black lead, hath hitherto been discovered in one mountain, or ridge of hills only in this realm; and that great waste and destruction therein, hath of late years been made by wicked and evil-disposed persons, who, by reason of the situation of the mine or mines, wad-hole or wad-holes of the said wad, black cawke or black lead, and of the great difficulty to secure and preserve the same from being unlawfully broke, or by force entered into; and also by reason of the small punishment by the laws now in being, annexed to offences of the like kind, have been encouraged unlawfully to enter, and by force to keep possession of the same; and from thence unlawfully to take and carry away great quantities of the said wad, black cawke or black lead; for the more effectual security of all and

and every mine or mines, wad-hole or wad-holes of wad or black cawke, commonly called black lead; and for preventing the unlawful breaking and entering into the same; or the unlawful taking and carrying away from such mine or mines, wad-hole or wad-holes, any wad, black cawke or black lead; and for punishing such offenders in a more exemplary manner, than by the laws in being can now be done; May it therefore please your most excellent majesty, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all and every person or persons that shall, from and after the twenty-fourth day of *June* which shall be in the year of our lord one thousand seven hundred and fifty-two, unlawfully break, or by force enter into any mine or mines, wad-hole or wad-holes of wad or black cawke, commonly called black lead, or into any pit, shaft, adit or vein of wad, black cawke or black lead, with an intent to take and carry away from thence any wad, black cawke or black lead; or shall unlawfully from thence take and carry away any wad, black cawke or black lead, although such mine or mines, wad-hole or wad-holes, pit, shaft, adit or vein, be not actually broke, or by force entered into by such offender or offenders; or shall aid, abet, assist, hire or command any person or persons to commit such offence or offences as aforesaid; that then, and in every such case, all and every such person or persons shall be deemed and construed to be guilty of felony; and it shall and may be lawful for the court, or judge, before whom any such person or persons so offending as aforesaid, shall be lawfully convicted, to order such offender or offenders to be committed to the prison or gaol of the said county, appointed for criminals, or to some house of correction within the same county, for a time not exceeding one year, there to be kept to hard labour during all the said time, and to be publicly whipt by the common hangman, or by the master of such house of correction, at such times, and at such places, and in such manner, as such court or judge shall think proper; or it shall and may be lawful to and for such court or judge, or for any other subsequent court held at the same place, with the like authority as the former, to order such offender or offenders to be transported to some of his majesty's plantations beyond the seas, for a term not exceeding seven years, as such court or judge shall think most proper; and thereupon judgment shall be given, that the person or persons so convicted shall be committed and whipt, or transported accordingly; and if transportation shall be directed, the same shall be executed in such manner, as is or shall be provided by law for the transportation of felons; and if any such person or persons so committed or transported, shall voluntarily escape or break prison, or return from transportation before the expiration of the time for which he, she or they shall be ordered to be transported, as aforesaid, such person or persons being thereof lawfully convicted, shall suffer death as a felon, without benefit of clergy, and shall be tried for such felony in the county where he, she or they so escaped, or where he, she or they shall be apprehended.

The entering any mines of black lead, with intent to steal,

or the assisting or hiring persons to do so, deemed felony;

and the offenders to be committed for a year, and publicly whipt;

or to be transported for 7 years;

and if they escape from prison, or return from transportation, to suffer death;

and a certificate of the former conviction deemed sufficient proof thereof.

*Señ. 2.* "And be it further enacted by the authority aforesaid, That if any person shall be convicted or attainted of any of the offences aforesaid, and shall voluntarily escape, break prison or return from transportation as aforesaid, and shall be apprehended in any other county or city different from that wherein the said offence was committed, the clerk of the assize, or clerk of the peace for the county or city where such conviction or attainder for the said offence or offences was had, shall, at the request of the prosecutor, or of any other on his majesty's behalf, certify the same by a transcript in few words, containing the effect and tenor of such conviction or attainder, for which certificate two shillings and six pence, and no more shall be paid; and such certificate being produced in court shall be sufficient proof of such former conviction or attainder.

Receivers of lead, knowing such to be stolen, guilty of felony.

*Señ. 3.* "And be it further enacted by the authority aforesaid, That all and every person or persons, who shall, from and after the said twenty-fourth day of *June* one thousand seven hundred and fifty-two, buy or receive any wad or black cawke, commonly called *Black Lead*, knowing the same to be so unlawfully taken and carried away as aforesaid, shall be deemed and construed to be guilty of felony, and being convicted thereof, shall be subject and liable to all the pains and penalties, which any person or persons can or may by the laws and statutes of this realm be subject and liable to, for buying or receiving any goods or chattels that have been feloniously taken or stolen, knowing the same to have been stolen."

## Blasphemy and Profaneness.

**B**LASPHEMY (from the Greek *βλάπτω*, *laedo*, and *φῆμι*, *fama*) is an injury to God, by denying that which is due and belonging to him, or attributing to him what is not agreeable to his nature. *Lindw. prov. Const. c. 1.* *Profaneness* is irreverence of what is sacred. *Johns.*

All blasphemies against God, as denying his being or providence; all profane scoffing at the holy scripture, or exposing any part thereof to contempt or ridicule; impostures in religion, as falsely pretending to extraordinary commissions from God, and terrifying or abusing the people with false denunciations of judgment, &c. All open lewdness grossly scandalous, such as was that of those persons who exposed themselves naked to the people in a balcony in *Covent-Garden* with most abominable circumstances; offences of this nature, because they tend to subvert all religion or morality, which are the foundation of government, are punishable by the temporal judges with fine and imprisonment, and also such corporal infamous punishment as to the court in discretion shall seem meet, according to the heinousness of the crime. *1 Hawk. P. C. 6, 7.*

Seditious words in derogation of the established religion are indictable, as tending to a breach of the peace; as these, your religion is a new religion,

gion, and preaching is but prattling, and prayer once a day is more edifying. 1 *Hawk. P. C.* 7.

**Stat. 3 Jac. 1. c. 21.** [*A. D.* 1605. *intituled*] “An act to restrain the abuses of players.”

“For the preventing and avoiding of the great abuse of the holy name of God, in stage-plays, interludes, *May*-games, shews, and such like; (2) Be it enacted by our sovereign lord the king’s majesty, and by the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That if at any time or times after the end of this present session of parliament, any person or persons do or shall, in any stage-play, interlude, shew, *May*-game or pageant, jestingly or prophanely speak or use the holy name of God, or of Christ Jesus, or of the Holy Ghost, or of the Trinity, which are not to be spoken but with fear and reverence, shall forfeit for every such offence by him or them committed, ten pounds: (3) The one moiety thereof to the king’s majesty, his heirs and successors, the other moiety thereof to him or them that will sue for the same in any court of record at *Westminster*, wherein no essoin, protection or wager of law shall be allowed.”

The penalty of players on stage, &c. profanely abusing the name of God.

By the toleration act, 1 *Will. & M. sess.* 1. c. 18. *sess.* 17. No person shall have any benefit of that act, who shall deny in his preaching or writing, the doctrine of the Blessed Trinity, as it is set forth in the thirty-nine articles.

**Stat. 9 & 10 Will. c. 32.** [*A. D.* 1698. *intituled*] “An act for the more effectual suppressing of blasphemy and profaneness.”

“Whereas many persons have of late years openly avowed and published many blasphemous and impious opinions, contrary to the doctrines and principles of the christian religion, greatly tending to the dishonour of Almighty God, and may prove destructive to the peace and welfare of this kingdom: Wherefore, for the more effectual suppressing of the said detestable crimes, Be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That if any person or persons, having been educated in, or at any time having made profession of, the christian religion within this realm, shall, by writing, printing, teaching, or advised speaking, deny any one of the persons of the Holy Trinity to be God, or shall assert or maintain there are more Gods than one, or shall deny the christian religion to be true, or the holy scriptures of the Old and New Testament to be of divine authority, and shall upon indictment or information in any of his majesty’s courts at *Westminster*, or at the assizes, be thereof lawfully convicted by the oath of two or more credible witnesses, such person or persons for the first offence shall be adjudged incapable and disabled in law, to all intents and purposes whatsoever, to have or enjoy any office or offices, employment or employments, ecclesiastical, civil, or military, or any part in them, or any profit or advantage

Persons denying the Trinity, or asserting there are more Gods than one, or denying the christian religion to be true, &c. being convicted thereof, disabled to hold any office, &c.



Further disabilities; if a second time convicted thereof.

vantage appertaining to them, or any of them: And if any person or persons so convicted, as aforesaid, shall at the time of his or their conviction enjoy or possess any office, place or employment, such office, place or employment, shall be void, and is hereby declared void: And if such person or persons shall be a second time lawfully convicted, as aforesaid, of all or any the aforesaid crime or crimes, that then he or they shall from thenceforth be disabled to sue, prosecute, plead, or use any action or information in any court of law or equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to bear any office, civil or military, or benefice ecclesiastical for ever within this realm, and shall also suffer imprisonment for the space of three years, without bail or mainprize, from the time of such conviction.

No prosecution unless information be given in four days after words spoken, &c.

*Stat. 2.* " Provided always, and be it enacted by the authority aforesaid, That no person shall be prosecuted by virtue of this act, for any words spoken, unless the information of such words shall be given upon oath before one or more justice or justices of the peace, within four days after such words spoken, and the prosecution of such offence be within three months after such information.

Person for the first offence, (on renouncing his opinion in four months after conviction) shall be discharged from penalty, &c.

*Stat. 3.* " Provided also, and be it enacted by the authority aforesaid, That any person or persons, convicted of all or any of the aforesaid crime or crimes, in manner aforesaid, shall for the first offence (upon his, her or their acknowledgment and renunciation of such offence or erroneous opinions, in the same court where such person or persons was or were convicted, as aforesaid, within the space of four months, after his, her or their conviction) be discharged from all penalties and disabilities incurred by such conviction; any thing in this act contained to the contrary thereof in any wise notwithstanding."

22 Geo. 2. c. 33.

By stat. 22 Geo. 2. c. 33. art. 2. All persons in or belonging to his majesty's ships or vessels of war, being guilty of profane oaths, cursings, execrations, drunkenness, uncleanness, or other scandalous actions, in derogation of God's honour, and corruption of good manners, shall incur such punishment as a court martial shall think fit to impose.

Christianity is part of the law. Strange 834. East. 2 Geo. 2. Rex v. Woolston.

He was convicted on four informations for his blasphemous discourses on the miracles of our Saviour: and attempting to move in arrest of judgment, the court declared they would not suffer it to be debated, whether to write against christianity *in general* was not an offence punishable in the temporal courts at common law; it having been settled so to be in *Taylor's case* in 1 Vent. 293. 3 Keb. 607, 621. and in the case of the *King v. Hall*, (*Stran.* 416.) They desired it might be taken notice of, that they laid their stress upon the word *general*, and did not intend to include disputes between learned men upon particular controverted points. The next term he was brought up, and fined 25*l.* for each of his four discourses, to suffer a year's imprisonment, and to enter into a recognizance for his good behaviour during his life, himself in 3000*l.* and 2000*l.* by others.

Information exhibited by the attorney general against the defendant Edmund Curl, for that he *existens homo iniquus et sceleratus ac nequiter machinans et intendens bonos mores subditorum hujus regni corrumpere, et eos ad nequitiam inducere quendam turpem iniquum et obscaenum libellum intitulat Venus in the cloister, or the Nun in her smock, impie et nequiter impressit et publicavit, ac imprimi et publicari causavit*, (setting out the several lewd passages,) *in malum exemplum, &c.* And of this the defendant was found guilty. And in *Trinity* term last it was moved in arrest of judgment by Mr. *Marsh*, that however the defendant may be punishable for this in the spiritual court as an offence *contra bonos mores*, yet it can't be a libel for which he is punishable in the temporal court. *Libellus* is a diminutive of the word *liber*, and 'tis *libellus* from it's being a book, and not from the matter of its contents. In the case *de libellis famosis*, my lord *Coke* says, that it must be against the public, or some private person, to be a libel; and I don't remember ever to have heard this opinion contradicted. Whatever tends to corrupt the morals of the people, ought to be censured in the spiritual court, to which properly all such causes belong: what their proceedings are I am a stranger to; but for me 'tis sufficient to say, I don't find any case wherein they were ever prohibited in such a cause. In the reign of king *Charles* the second there was a filthy run of obscene writings, for which we meet with no prosecution in the temporal courts; and since these were things not fit to go unpunished, it is to be supposed that my lords the bishops animadverted upon them in their courts. In the case of *The Queen v. Read*, 6 *Ann.* in *B. R.* there was an information for a libel in writing an obscene book called *The fifteen Plagues of a Maidenhead*, and after conviction it was moved in arrest of judgment, that this was not punishable in the temporal courts; and the opinion of chief justice *Holt* was so strong with the objection, that the prosecutor never thought fit to stir it again.

Mr. attorney general *contra*: I do not observe it is pretended there is any other way of punishing the defendant; for if the spiritual court had done it, instances might be given; and it is no argument to say we meet with no prohibitions; such a way of arguing would construe them into all sorts of jurisdictions.

What I insist upon is, that this is an offence at common law, as it tends to corrupt the morals of the king's subjects, and is against the *peace* of the king. *Peace* includes good order and government, and that peace may be broken in many instances without an actual force. 1. If it be an act against the constitution or civil government; 2. If it be against religion; and 3. If against morality.

1. Under the first head fall all the cases of seditious words or writings. 2 *Roll. Abr.* 78. pl. 2. 1 *Vent.* 324. 3 *Keb.* 841. and the case of *The Queen v. Bedford*, *Mich.* 12 *Ann.* whose treatise of hereditary right was held to be a libel, though it contained no reflection upon any part of the then government.

2. It is a libel if it reflects upon religion, that great basis of civil government and society; and it may be both a spiritual and temporal offence.

An obscene book is punishable as a libel against religion and morality. *Stra.* 788 *Mich.* 1 *Geo.* 2. *Rex v. Curl.*

*Cro. Jac.* 421. 2 *Roll. Abr.* 78. pl. 2. 1 *Vent.* 293. 3 *Keb.* 607, 621. In *Tremayne's Entries* 226. there is a sentence to have a paper fixed over the defendant's head, intimating that he had uttered blasphemous words tending to the subversion of government. There is one *Hall* now in custody on a conviction as for a libel, intitled *A sober Reply to the Merry Arguments about the Trinity*, and *Pasch.* 10 *Ann. Regina v. Clendon*, there was a special verdict on a libel about the Trinity, and it was not made a doubt of in that case.

3. As to morality. Destroying that, is destroying the peace of the government, for government is no more than public order, which is morality. My lord chief justice *Hale* used to say, christianity is part of the law, and why not morality too? I do not insist that every immoral act is indictable, such as telling a lie, or the like; but if it is destructive of morality in general, if it does, or may, affect all the king's subjects, it then is an offence of a public nature. And upon this distinction it is, that particular acts of fornication are not punishable in the temporal courts, and bawdy-houses are. In Sir *Charles Sedley's* case it was said, that this court is the *custos morum* of the king's subjects. 1 *Sid.* 168. And upon this foundation there have been many prosecutions against the players for obscene plays, tho' they have had interest enough to get the proceedings stayed before judgment. *Tremayne's Entries* 209, 213, 214, 215. 3d Vol. *State Trials*, lord Grey's case.

*Mich.* 10 *W.* 3. *Rex v. Hill*, the defendant was indicted for printing some obscene poems of my lord *Rockefester's*, tending to the corruption of youth; upon which he went abroad, and was outlawed; which he would not have done if his counsel had thought it no libel.

The spiritual courts punish only personal spiritual defamation by words; if it is reduced to writing, it is a temporal offence. *Salk.* 552. *Mo.* 627. and it is punishable as a libel. My lord *Coke* in the case *de libellis famosis* had nothing in view but scandalous defamatory libels. *Libellus* is not always to be taken as a technical word; in this case it may stand as an obscene little book. And as to the case of *Read*, there was no judgment, but it went off upon the chief justice's saying, Why don't you go to the spiritual court; which was giving a false reason for that sudden opinion, now it appears there is no instance of the spiritual court's intermeddling, where it is reduced to writing or in print.

Chief justice: I think this a case of very great consequence, though if it was not for the case of *The Queen v. Read*, I should make no great difficulty of it. Certainly the spiritual court has nothing to do with it, if in writing: and if it reflects on religion, virtue, or morality, if it tends to disturb the civil order of society, I think it is a temporal offence. I do not think *libellus* is always to be taken as a technical word. Would not trover lie *de quodam libello intitulat'* the New Testament, and does not the spiritual court proceed upon a libel?

*Fortescue* J. I own this is a great offence, but I know of no law, by which we can punish it. Common law is common usage, and where there is no law there can be no transgression. At common law drunkenness, or cursing

sing and swearing, were not punishable; and yet I do not find the spiritual court took notice of them. This is but a general solicitation of chastity, and not indictable. Lady *Purbeck's* case was for procuring men and women to meet at her house, and held not indictable, unless there had been particular facts to make it a bawdy-house. To make it indictable there should be a breach of the peace, or something tending to it, of which there is nothing in this case. A libel is a technical word at common law, and I must own the case of *The Queen v. Read* sticks with me, for there was a rule to arrest the judgment *nisi*. And in Sir *Charles Sedley's* case there was a force in throwing out bottles upon peoples heads.

*Reynolds J.* It is much to be lamented if this is not punishable: I agree there may be many instances, where acts of immorality are of spiritual cognizance only; but then those are particular acts, where the prosecution is *pro salute animae* of the offender, and not where they are of a general immoral tendency: which I take to be a reasonable distinction. *Read's* case is indeed a case in point. But I confess I should not have been of that opinion. *Libellus* does not *ex vi termini* import defamation, but is to be governed by the epithet which is added to it. This is surely worse than Sir *Charles Sedley's* case, who only exposed himself to the people then present, who might choose whether they would look upon him or not; whereas this book goes all over the kingdom. Drunkenness and swearing were punishable in the spiritual court before the acts which made them temporal offences, and in which the jurisdiction of the spiritual court is saved.

*Probyn J.* inclined this to be punishable at common law, as an offence against the peace, in tending to weaken the bonds of civil society, virtue, and morality. But it being a case of great consequence, it was ordered to stand over for a further argument.

And this term *Page J.* being come into the *King's Bench* in the room of justice *Fortescue*, it was to have been spoke to by Mr. solicitor general and myself. But *Curl* not having attended me in time, I acquainted the court I was not prepared: and my want of being ready proceeding from his own neglect, they refused to indulge him to the next term. And in two or three days, they gave it as their unanimous opinion, that this was a temporal offence. They said it was plain the force used in *Sedley's* case was but a small ingredient in the judgment of the court, who fined him 2000*l.* And if the force was all they went upon, there was no occasion to talk of the court's being *censor morum* of the king's subjects. They said if *Read's* case was to be adjudged, they should rule it otherwise: and therefore in this case they gave judgment for the king. And the defendant was afterwards set in the pillory, as he well deserved.

In the year 1656, *James Nayler*, for personating our Saviour and suffering his followers to worship him, and pay him divine honours, was sentenced to be set in the pillory, and to have his tongue bored through with a red hot iron, and to be whipped, and stigmatized in the forehead with the letter B. See *Swearing*. State Triz. 802.

## Books.

**STAT. 7 Ann. c. 14.** [*A. D. 1708. intituled*] “ An act for the better preservation of parochial libraries in that part of *Great Britain* called *England*.”

*Sec. 10.* “ And it is further enacted and declared by the authority aforesaid, that in case any book or books be taken or otherwise lost out of the said library, it shall and may be lawful to or for any justice of peace within the county, riding, or division, to grant his warrant to search for the same, and in case the same be found, such book or books so found shall immediately, by order of such justice, be restored to the said library; any law, statute, or usage to the contrary in any wise notwithstanding.”

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## Bread.

**STATUTE 31 Geo. 2. c. 29.** [*A. D. 1757. intituled*] “ An act for the due making of bread; and to regulate the price and assize thereof; and to punish persons who shall adulterate meal, flour or bread.”

Preamble, re-  
citing act  
51 Hen. 3.  
and 8 Ann.

Whereas by an act of parliament made in the one and fiftieth year of the reign of king *Henry* the third, intituled, *Affisa Panis & cervisie*, provision was made, amongst other things, for settling the assize of bread: And whereas by an act of parliament made in the eighth year of the reign of her late majesty queen *Ann*, intituled, *An act to regulate the price and assize of bread*, so much of the said act (intituled, *Affisa Panis & cervisie*) as related to the assize of bread, was repealed, annulled, and made void; and the said act made in the said eighth year of the reign of her said late majesty queen *Ann*, was only made to continue in force for three years, and from thence to the end of the then next session of parliament, but by some subsequent acts of parliament, the said in part recited act made in the said eighth year of her said majesty queen *Ann*, with several alterations and amendments thereto, hath been continued until the twenty-fourth day of *June* one thousand seven hundred and fifty-seven, and from thence to the end of the then next session of parliament: And whereas it is expedient to reduce into one act the several laws now in force relating to the due making, and to the price and assize of bread, and to make some alterations in, and amendments to, the same; Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That the said act made in the said eighth year of the reign of her said late majesty queen *Ann*, and all alterations and amend-

The recited  
act of 8 Ann.  
and other acts

ments made by any acts of parliament subsequent thereto, for continuing, explaining, or amending the same, is and are hereby further continued from the expiration thereof, until the twenty-ninth day of *September* one thousand seven hundred and fifty-eight; and that from and after the said twenty-ninth day of *September* one thousand seven hundred and fifty-eight, so much of the said statute (intituled, *Affisa Panis & cervisiae*) as relates to the assize of bread, and which would otherwise be revived, when the said recited act made in the said eighth year of her said late majesty queen *Ann*, shall expire; and also the said act of parliament made in the said eighth year of the reign of her said late majesty queen *Ann*, and all the alterations and amendments made by any acts of parliament subsequent thereto, for continuing, explaining, or amending the same, shall be and are hereby repealed, annulled, and made void.

subsequent, and relating thereto, continued to 29 Sept. 1758; from which time so much of the act of 51 Hen. 3. as relates to the assize of bread, and act 8 Ann. and other acts continuing, or amending, the same, are repealed.

*Sett.* 2. "And, to the intent that from and after the said twenty-ninth day of *September*, a plain and constant rule and method may be duly observed and kept in the making and assizing of the several sorts of bread which shall be made for sale in any place or places where an assize of bread shall at any time be thought proper to be set in pursuance of this act; Be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September* it shall be lawful for the court, or person or persons herein after authorized by this act to set the assize of bread, to set, ascertain, and appoint, in any place or places within their respective jurisdictions, the assize and weight of all sorts of bread, which shall, in any such place or places, be made for sale, or exposed to sale, and the price to be paid for the same respectively, when, and as often, from time to time, as any such court, or person or persons as aforesaid, shall think proper; and that in every assize of bread which shall be set in pursuance of this act, respect shall, from time to time, be had by the court, person or persons as aforesaid, who shall set the same, to the price which the grain, meal, or flour, whereof such bread shall be made, shall bear in the publick market or markets, in or near the place or places for which any such assize shall be so at any time set; and making, from time to time, reasonable allowance to the makers of bread for sale, where any such assize shall be so set for their charges, labour, pains, livelihood, and profit, as such court, or person or persons as aforesaid respectively, who shall at any time think fit to set any such assize, shall, from time to time, deem proper.

General ordinance for setting an assize and price of bread.

Assize to be regulated by the price the grain, meal or flour bears in the market, and the profit to be allowed to the baker.

*Sett.* 3. "And be it further enacted by the authority aforesaid, that from and after the said twenty-ninth day of *September*, where an assize of bread shall at any time be thought proper to be set for any place or places by virtue of this act, no person or persons shall there make for sale, or sell, or expose to or for sale, any sort of bread, except wheaten and household, otherwise brown bread, and such other sort or sorts of bread, as in such place or places shall be publicly allowed to be made or sold, by the court, or person or persons, who by this act are authorized to set an assize of bread for any such place or places; but where it hath been usual to make bread with the meal or flour of rye, barley oats, beans, or pease, or with the meal or flour of any such different sorts of grain mixed together, or the

Where an assize shall be set, no sort of bread (wheaten and household excepted) other than what is thereby allowed to be made for sale;

under penalty  
of forfeiting  
not exceeding  
40 s. nor less  
than 20 s.

Affize and  
price of bread  
to be set ac-  
cording to the  
two following  
tables mark'd  
N<sup>o</sup> I. and  
N<sup>o</sup> II.

court, or person or persons impowered to set an affize of bread by virtue of this act, shall at any time think fit to order or allow in any place or places within the limits of their respective jurisdictions, bread to be made with rye, barley, oats, beans or pease, or with the flour or meal thereof, or with the meal or flour of any such different sorts of grain mixed together, such bread shall and may be there made and sold; and if any person shall offend in the premisses, and shall be convicted of any such offence, either by his, her, or their own confession, or by the oath of one or more credible witness or witnesses, before any magistrate or magistrates, justice or justices of the peace, within the limits of his or their jurisdiction; every one so offending shall, on every such conviction, forfeit and pay any sum not exceeding forty shillings, nor less than twenty shillings, as any such magistrate or magistrates, justice or justices, shall think fit and order.

*Sec. 4.* And be it also enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September*, in every place and places for which an affize of bread shall at any time be thought proper to be set by virtue of this act, the affize and weight of the several sorts of bread which shall be there made for sale, or sold, or exposed to or for sale, and the price to be paid for the same respectively, shall be set and ascertained according to the tables hereafter following, marked N<sup>o</sup> I. and II.

## N<sup>o</sup> I. A TABLE.

N<sup>o</sup> I.A TABLE of the Assize and Price of bread made of Wheat,  
in Two Parts.

## Part the First, or The-Assize Table,

Contains, in column N<sup>o</sup> I. the price of the bushel of wheat *Winchester* measure, from 2 s. 9 d. to 14 s. 6 d. the bushel, the allowance of the magistrates or justices to the baker, for baking, being included; and in column N<sup>o</sup> II. are the weights of the several loaves: so that for example) if the price of wheat in the market is 5 s. the bushel, and the magistrates allow 1 s. 6 d. the bushel to the baker for baking, find 6 s. 6 d. in column N<sup>o</sup> I. and even therewith, under N<sup>o</sup> II. will be found the weights of the several loaves; but if the price in the market is 3 s. and the allowance 1 s. then the weight of the said loaves will be found even with 4 s.

*Note*, That the wheaten loaves are three-fourths of the weight of the household loaves; and if the magistrates or justices shall think fit to allow of any white loaves of the price of one penny or two pence, they are to weigh at all times three-fourths of the weight of the wheaten loaves of the same price.

## Part the Second, or, The Price Table;

Contains, in column N<sup>o</sup> II. the price of the bushel of wheat *Winchester* measure, from 2 s. 9 d. to 14 s. 6 d. the bushel, the allowance of the magistrates or justices to the baker, for baking, being included; and in column N<sup>o</sup> I. are the prices of the peck, half peck, and quartern, wheaten and household loaves: so that (for example) if the price of wheat in the market is 5 s. the bushel, and the magistrates allow 1 s. 6 d. to the baker for baking, find 6 s. 6 d. in N<sup>o</sup> II. and even therewith under N<sup>o</sup> I. will be found the prices of the several loaves; but if the price in the market is 3 s. the bushel, and the allowance 1 s. then the prices of the said loaves will be found even with 4 s.

*Note*, That the prices of the household loaves are always three-fourths of the prices of the wheaten loaves; and where it shall be thought proper to allow of half quartern loaves, the prices of such loaves (if sold singly) are to be half a farthing higher than is allowed by this table, when it shall so happen that the farthing is split.

And magistrates and justices, within their respective jurisdictions, being to set the assize, and fix the price, of the several loaves of bread, having respect to the price which the grain, meal or flour, of which the same are made, shall bear in the market; but no provision being made how they should know what price the respective sorts of meal and flour should be esteemed to bear, in proportion to the price of wheat, they are therefore to take notice, That the peck loaf of each sort of bread is to weigh, when well baked, 17 lb. 6 ounces averdupois, and the rest in proportion; and that every sack of meal or flour is to weigh 2 cwt. 2 qrs. net; and that from every sack of meal or flour there ought to be produced, on the average, 20 such peck loaves of bread; and by observing the said rule, magistrates and justices may at all times know if the baker hath more or less than the allowance they intend to give him. N<sup>o</sup> II.



N <sup>o</sup> I.		N <sup>o</sup> II.																															
		Part the First; or, The Affize Table.																															
The Price of the Bushel of Wheat and Baking.	Small Affize Bread.										Large Affize Bread.																						
	The Penny Loaf.					Twopenny Loaf.					Sixpenny Loaf.					Twelvepenny Loaf.					Eighteenpenny Loaf.												
	Wheaten		Household			Wheaten		Household			Wheaten		Household.			Wheaten		Household			Wheaten		Household										
	s.	d.	oz.	dr.		lb.	oz.	dr.		lb.	oz.	dr.		lb.	oz.	dr.		lb.	oz.	dr.		lb.	oz.	dr.									
2	9	22	4		29	4	2	12	8	3	10	8		8	5	8	10	15	9		16	11	0	21	15	2	25	0	8	32	14	11	
3	0	20	4		27	1	2	8	8	3	6	2		7	9	8	10	2	6		15	3	0	20	4	12	22	12	8	30	7	2	
3	3	18	9		25	4	2	5	13	3	2	9		6	15	4	9	7	11		13	14	7	18	15	5	20	13	11	28	7	0	
3	6	17	0		23	3	2	2	12	2	14	5		6	8	4	8	11	0		13	0	9	17	6	1	19	8	13	26	1	1	
3	9	16	6		21	6	2	0	11	2	10	12		6	2	2	8	0	5		12	4	4	16	0	11	18	6	7	24	1	0	
4	0	15	4		20	4	1	14	8	2	8	8		5	11	8	7	9	8		11	7	0	15	3	0	17	2	8	22	12	8	
4	3	14	4		19	1	1	12	8	2	6	2		5	5	9	7	2	6		10	11	2	14	4	12	16	0	11	21	7	2	
4	6	13	9		17	15	1	11	2	2	3	14		5	1	6	6	11	10		10	2	12	13	7	4	15	4	2	20	2	14	
4	9	12	12		17	1	1	9	9	2	2	2	4		4	12	11	6	6	7		9	9	7	12	12	14	14	6	2	19	3	5
5	0	12	1		16	6	1	8	3	2	0	11		4	8	9	6	2	2		9	1	1	12	4	4	13	9	0	18	6	7	
5	3	11	9		15	7	1	7	3	1	14	14		4	5	8	5	12	11		8	11	1	11	9	6	13	0	9	17	6	1	
5	6	11	2		14	10	1	6	4	1	13	4		4	2	12	5	7	13		8	5	8	10	15	10	12	8	3	16	7	7	
5	9	10	8		14	4	1	5	0	1	12	8		3	15	0	5	5	9		7	14	0	10	11	2	11	13	0	16	0	11	
6	0	10	2		13	9	1	4	4	1	11	2	3	12	12		5	1	6		7	9	8	10	2	12	11	6	4	15	4	2	
6	3	9	11		13	1	1	3	6	1	10	1	3	10	2		4	14	3		7	4	4	9	12	6	10	14	6	14	10	9	
6	6	9	4		12	10	1	2	9	1	9	4		3	7	10	4	11	13		6	15	4	9	7	11	10	6	13	14	3	8	
6	9	9	0		12	1	1	1	15	1	8	3		3	5	13	4	8	9		6	11	10	9	1	1	10	1	7	13	9	10	
7	0	8	11		11	9	1	1	6	1	7	3		3	4	2	4	5	8		6	8	4	8	11	1	9	12	7	13	0	9	
7	3	8	7		11	2	1	0	14	1	6	4		3	2	9	4	2	12		6	5	2	8	5	8	9	7	11	12	8	3	
7	6	8	3		10	11	1	0	6	1	5	6		3	1	1	4	0	3		6	2	2	8	0	5	9	3	3	2	0	8	
7	9	7	14		10	6	0	15	12	1	4	12		2	15	4	3	14	5		5	14	8	7	12	10	8	13	12	11	10	15	
8	0	7	10		10	2	0	15	4	1	4	4		2	13	12	3	12	12		5	11	8	7	9	8	8	9	4	11	6	4	
8	3	7	5		9	15	0	14	10	1	3	14		2	11	14	3	11	9		5	7	13	7	7	3	8	3	11	11	2	12	
8	6	7	2		9	9	0	14	4	1	3	3		2	10	12	3	9	8		5	5	9	7	7	3	1	8	0	5	10	12	9
8	9	6	15		9	4	0	13	14	1	2	9		2	9	11	3	7	10		5	3	7	6	15	4	7	13	2	10	6	13	
9	0	6	13		8	15	0	13	9	1	1	14		2	8	11	3	5	11		5	1	6	6	11	6	7	10	1	10	1	1	
9	3	6	9		8	12	0	13	2	1	1	8		2	7	7	3	4	9		4	14	14	6	9	2	7	6	5	9	13	10	
9	6	6	7		8	8	0	12	14	1	1	0		2	6	9	3	2	15		4	13	2	6	5	14	7	3	11	9	8	13	
9	9	6	4		8	5	0	12	8	1	0	10		2	5	8	3	1	14		4	11	0	6	3	12	7	0	8	9	5	10	
10	0	6	1		8	2	0	12	1	1	0	5		2	4	4	3	0	15		4	8	9	6	1	14	6	12	13	9	2	13	
10	3	5	15		7	15	0	11	13	0	15	14		2	3	8	2	15	11		4	7	0	5	15	5	6	10	8	8	15	0	
10	6	5	13		7	12	0	11	9	0	15	7		2	2	12	2	14	5		4	5	8	5	12	11	6	8	4	8	11	0	
10	9	5	11		7	9	0	11	6	0	15	1		2	2	1	2	13	3		4	4	2	5	10	6	6	6	2	8	7	9	
11	0	5	9		7	5	0	11	2	0	14	10		2	1	6	2	11	14		4	2	12	5	7	13	6	4	2	8	3	10	
11	3	5	6		7	3	0	10	13	0	14	5		2	0	7	2	10	15		4	0	14	5	5	14	6	1	5	8	0	13	
11	6	5	5		7	1	0	10	10	0	14	2		1	15	14	2	10	6		3	15	12	5	4	12	5	15	10	7	15	2	
11	9	5	2		6	15	0	10	5	0	13	14		1	14	14	2	9	11		3	13	13	5	3	7	5	12	11	7	13	2	
12	0	5	1		6	13	0	10	2	0	13	9		1	14	5	2	8	11		3	12	11	5	1	6	5	11	0	7	10	1	
12	3	4	15		6	10	0	9	15	0	13	4		1	13	13	2	7	12		3	11	9	4	15	7	5	9	6	7	7	3	
12	6	4	14		6	8	0	9	12	0	12	15		1	13	4	2	6	13		3	10	9	4	13	10	5	7	13	7	4	7	
12	9	4	13		6	5	0	9	9	0	12	10		1	12	12	2	5	15		3	9	8	4	11	13	5	6	5	7	1	12	
13	0	4	11		6	4	0	9	5	0	12	8		1	11	15	2	5	8		3	7	14	4	11	0	5	3	13	7	0	8	
13	3	4	9		6	3	0	9	2	0	12	6		1	11	5	2	5	1		3	6	10	4	10	2	5	1	15	6	15	4	
13	6	4	8		6	1	0	9	0	0	12	1		1	11	0	2	4	4		3	6	0	4	8	9	5	1	0	6	12	13	
13	9	4	7		5	15	0	8	13	0	11	13		1	10	7	2	3	8		3	4	14	4	7	0	4	15	5	6	10	8	
14	0	4	5		5	13	0	8	11	0	11	0		1	10	1	2	2	12		3	4	2	2	4	5	8	4	14	3	6	8	4
14	3	4	4		5	11	0	8	8	0	11	6		1	9	9	2	2	1		3	3	2	4	4	2	4	12	11	6	6	2	
14	6	4	3		5	9	0	8	6	0	11	2		1	9	2	2	1	6		3	2	4	4	2	12	4	11	6	6	4	2	

N <sup>o</sup> I.												N <sup>o</sup> II.
Part the Second.												The Price of the Bushel of Wheat, and Baking.
Prized Bread.												
Quartern Loaf.				Halfpeck Loaf.				Peck Loaf.				
Wheaten.		Household		Wheaten		Household		Wheaten		Household		s. d.
s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s. d.
0	3	0	2	0	6	0	4	1	0	0	9	2 9
0	3	0	2	0	7	0	5	1	1	0	10	3 0
0	3	0	2	0	7	0	5	1	3	0	11	3 3
0	4	0	3	0	8	0	6	1	4	0	0	3 6
0	4	0	3	0	8	0	6	1	5	0	1	3 9
0	4	0	3	0	9	0	6	1	6	1	1	4 0
0	4	0	3	0	9	0	7	1	7	1	2	4 3
0	5	0	3	0	10	0	7	1	8	1	3	4 6
0	5	0	4	0	10	0	8	1	9	1	4	4 9
0	5	0	4	0	11	0	8	1	11	1	5	5 0
0	6	0	4	0	11	0	9	2	0	1	6	5 3
0	6	0	4	0	11	0	9	2	1	1	7	5 6
0	6	0	5	0	11	0	9	2	2	1	7	5 9
0	7	0	5	0	11	0	10	2	3	1	8	6 0
0	7	0	5	0	12	0	10	2	4	1	9	6 3
0	7	0	5	0	13	0	11	2	6	1	10	6 6
0	7	0	5	0	13	0	11	2	7	1	11	6 9
0	8	0	6	0	14	0	11	2	8	2	0	7 0
0	8	0	6	0	14	0	11	2	9	2	1	7 3
0	8	0	6	0	15	0	11	2	10	2	2	7 6
0	8	0	6	0	15	0	11	2	11	2	2	7 9
0	9	0	6	0	16	0	11	3	0	2	3	8 0
0	9	0	7	0	17	0	12	3	2	2	4	8 3
0	9	0	7	0	17	0	12	3	3	2	5	8 6
0	10	0	7	0	18	0	13	3	4	2	6	8 9
0	10	0	7	0	18	0	13	3	5	2	7	9 0
0	10	0	8	0	19	0	13	3	6	2	7	9 3
0	10	0	8	0	19	0	14	3	7	2	8	9 6
0	11	0	8	0	20	0	14	3	8	2	9	9 9
0	11	0	8	0	21	0	15	3	10	2	10	10 0
0	11	0	8	0	21	0	15	3	11	2	11	10 3
0	12	0	9	0	22	0	16	4	0	3	0	10 6
0	12	0	9	0	22	0	16	4	1	3	1	10 9
0	12	0	9	0	23	0	17	4	2	3	2	11 0
0	13	0	9	0	24	0	17	4	3	3	2	11 3
0	13	0	10	0	25	0	17	4	4	3	3	11 6
0	14	0	10	0	26	0	18	4	6	3	4	11 9
0	14	0	10	0	27	0	18	4	7	3	5	12 0
0	14	0	10	0	28	0	19	4	8	3	6	12 3
0	15	0	10	0	29	0	19	4	9	3	7	12 6
0	15	0	11	0	30	0	20	4	10	3	8	12 9
0	15	0	11	0	31	0	20	4	11	3	8	13 0
0	16	0	11	0	32	0	21	5	1	3	9	13 3
0	16	0	11	0	33	0	21	5	2	3	10	13 6
0	16	0	11	0	34	0	22	5	3	3	11	13 9
0	17	0	12	0	35	0	23	5	4	4	0	14 0
0	17	0	12	0	36	0	24	5	5	4	1	14 3
0	17	0	12	0	37	0	25	5	6	4	2	14 6

A TABLE of the affize and price of bread made of the several grains hereunder mentioned.

This table is divided into seven columns: columns the 1st and 7th contain the prices of the bushel of grain, the allowance for baking included; which prices are adapted so as to serve either for the *Winchester* bushel of rye, the *Winchester* bushel of barley, the *Winchester* bushel of oats, the *Winchester* bushel of beans, the *Winchester* bushel of maslin *alias* miscellany, consisting of two-thirds wheat and one-third rye; the price of either of which bushels in the market being known, the magistrates are to add the intended allowance there- to; the amount of which being found either in column N<sup>o</sup> I. or VII. the weights which the several penny, twopenny, sixpenny, and twelpenny loaves ought to be of, will be found under columns N<sup>o</sup> II. III. IV. and V. and the price of the respective peck loaves (which are to weigh 17 lb. 6 oz. each) under N<sup>o</sup> VI.

Example, when the price of the bushel of barley in the market, with the allowance to the baker, is 4s. look for that sum in column the 1st or 7th, and under their respective titles in the same line will be found the weights which the several affize barley loaves should be of, and the price of the peck barley loaf, and so of each of the other sorts.

*Note.* Where bread is allowed at any time to be made for sale of pease only, the affize and price thereof are to be set and fixed from the bean columns; and where bread is ordered to be made for sale of a coarse sort of maslin or miscellany grain, consisting of one-third rye, one third barley, and one third either pease or beans, the affize and price thereof are to be set and fixed from the barley columns.

*Note also,* That this table is framed for bread to be made of the whole produce of the said several grains, except the bran or hull thereof only.

N <sup>o</sup> I.	N <sup>o</sup> II.										N <sup>o</sup> III.														
Price of the Bushel, and Baking.	Weight of the Penny Loaf.										Weight of the twopenny loaf.														
	Rye		Barley.		Oats.		Beans.		Maslin.		Rye.		Barley.		Oats.		Beans.		Maslin.						
	s.	d.	oz.	d.	oz.	d.	oz.	d.	oz.	d.	lb.	oz.	d.	lb.	oz.	d.	lb.	oz.	d.	lb.	oz.	d.			
1 0	62	8	67	8	31	4	83	12	70	0	7	13	0	8	7	0	3	14	8	10	7	8	8	12	0
1 3	50	0	54	0	25	0	67	0	56	0	6	4	0	6	12	0	3	2	0	8	6	0	7	0	0
1 6	41	10	45	0	20	14	55	12	46	10	5	3	5	5	10	0	2	9	12	6	15	8	5	13	4
1 9	35	11	38	9	17	14	47	14	40	0	4	7	6	4	13	2	2	3	12	5	15	12	5	0	0
2 0	31	4	33	12	15	10	41	14	35	0	3	14	8	4	3	8	1	15	4	5	3	12	4	6	0
2 3	27	13	30	0	13	14	37	4	31	2	3	7	10	3	12	0	1	11	12	4	10	8	3	14	4
2 6	25	0	27	0	12	8	33	8	28	0	3	2	0	3	6	0	1	9	0	4	3	0	3	8	0
2 9	22	11	24	9	11	6	30	7	25	6	2	13	6	3	1	2	1	6	12	3	12	14	3	2	12
3 0	20	13	22	8	10	7	27	14	23	5	2	9	10	2	13	0	1	4	14	3	7	12	2	14	10
3 3	19	4	20	12	9	10	25	12	21	8	2	6	8	2	9	8	1	3	4	3	3	8	2	11	0
3 6	17	13	19	4	8	15	23	15	20	0	2	3	11	2	6	8	1	1	14	2	15	14	2	8	0
3 9	16	11	18	0	8	5	22	5	18	10	2	1	6	2	4	0	1	0	11	2	12	10	2	15	4
4 0	15	10	16	14	7	13	20	15	17	8	1	15	4	2	1	12	0	15	10	2	9	14	2	3	0
4 3	14	12	15	14	7	6	19	11	16	8	1	13	8	1	15	13	0	14	12	2	7	6	2	1	0
4 6	13	14	15	0	6	15	18	10	15	9	1	11	13	1	14	0	0	13	14	2	5	3	1	15	2
4 9	13	2	14	4	6	9	17	11	14	12	1	10	5	1	12	9	0	13	3	2	3	6	1	13	8
5 0	12	8	13	8	6	4	16	12	14	0	1	9	0	1	11	0	0	12	8	2	1	8	1	12	0
5 3	11	14	12	14	5	15	15	15	23	5	1	7	13	1	9	13	0	11	15	1	15	14	1	10	10
5 6	11	5	12	4	5	11	13	3	12	11	1	6	11	1	8	9	0	11	6	1	14	7	1	9	6
5 9	10	13	11	12	5	7	14	9	2	2	1	5	11	1	7	8	0	10	14	1	13	2	1	8	4
6 0	10	6	11	4	5	3	13	15	11	10	1	4	13	1	6	8	0	10	7	1	11	14	1	7	5
6 3	10	0	10	13	5	0	13	6	11	3	1	4	0	1	5	10	0	10	0	1	10	12	1	6	6
6 6	9	10	10	6	4	13	12	13	10	12	1	3	4	1	4	12	0	9	10	1	9	12	1	5	8
6 9	9	4	10	0	4	10	12	6	10	6	1	2	9	1	4	0	0	9	5	1	8	13	1	4	12
7 0	8	15	9	10	4	7	11	15	10	0	1	1	13	1	3	4	0	8	15	1	7	15	1	4	0

## Bread.

No IV.										No V.										No VI.										No VII.	
Weight of the Sixpenny Loaf.										Weight of the Twelpenny Loaf.										Price of the Peck Loaf.										Price of the Baking, and	Price of the
Rye.	Barley.	Oats.	Beans.	Maltin.	Rye.	Barley.	Oats.	Beans.	Maltin.	Rye.	Barley.	Oats.	Beans.	Maltin.	Rye.	Barley.	Oats.	Beans.	Maltin.	Rye.	Barley.	Oats.	Beans.	Maltin.	Rye.	Barley.	Oats.	Beans.	Maltin.		
lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
23 7 0	25 5 0	11 11 8	31 6 8	26 4 0	46 14 9	50 10 0	23 7 0	0 02 13	0 52 8	0	4 4 4	0	4 4 4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
18 12 0	20 4 0	9 6 0	25 2 0	21 0 0	37 8 0	40 8 0	18 12 0	0 50 4	0 42 0	0	0 5 0	0	0 5 0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15 9 15	16 14 0	7 13 4	20 14 8	17 7 12	31 3 14	33 12 0	15 10 8	4 13 0	0 34 15	8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13 6 2	14 7 6	6 11 4	17 15 4	15 0 0	26 12 4	28 14 12	13 6 6	8 35 14	8 30 0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11 11 8	12 10 8	5 13 12	15 11 4	13 2 0	23 7 0	25 5 0	11 11 8	8 31 6	8 26 4	8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10 6 14	11 4 0	5 3 4	13 15 8	11 10 12	20 13 12	22 8 0	10 6 6	8 27 15	0 23 5	8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9 6 0	10 2 0	4 11 9	12 9 0	10 8 0	18 12 0	20 4 0	9 6 6	0 25 2	0 21 0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8 8 2	9 3 0	4 11 4	10 10 7	9 8 4	17 0 4	18 6 12	8 8 8	8 21 13	4 19 0	8	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7 12 15	8 7 0	3 14 10	9 7 4	8 11 14	15 9 15	16 14 0	7 13 4	4 20 14	8 17 7	12	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7 3 8	7 12 8	3 9 12	9 10 8	8 1 0	14 7 0	15 9 0	7 3 3	8 19 5	0 16 2	0	1	2	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6 11 1	7 3 3	3 5 10	8 15 10	7 8 0	13 6 2	14 7 0	6 11 4	4 17 15	4 15 0	0	1	3	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6 4 2	6 12 0	3 2 1	8 5 14	6 15 12	12 7 4	13 8 0	6 4 2	2 16 11	12 13 15	8	1	4	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5 13 12	6 5 4	2 14 14	7 13 10	6 9 0	11 11 8	12 10 8	5 13 12	15 11 4	4 13 2	0	1	5	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5 8 8	5 15 7	2 12 4	7 6 2	6 3 0	11 1 0	11 14 14	5 8 8	8 14 12	4 12 6	0	1	6	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5 3 7	5 10 0	2 9 10	6 15 9	5 13 6	10 6 14	11 4 0	5 3 3	4 13 15	2 11 10	12	1	8	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4 14 15	5 5 11	2 7 9	6 10 2	5 8 8	9 13 14	10 11 6	4 15 2	3 13 4	4 11 1	0	1	8	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4 11 0	5 1 0	2 5 10	6 4 8	5 4 0	9 6 0	10 2 0	4 11 0	2 12 9	0 10 8	0	1	10	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4 7 7	4 13 7	2 3 13	5 15 10	4 15 14	8 14 14	9 10 14	4 7 10	1 11 15	0 9 15 12	0	1	11	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4 4 1	4 9 11	2 2 2	5 11 5	4 12 2	8 8 2	9 3 0	4 4 4	4 10 6	9 8 4	0	2	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4 1 1	4 6 8	2 0 10	5 7 6	4 8 12	8 2 2	8 13 0	4 1 4	4 10 12	9 1 8	0	2	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3 14 7	4 3 8	1 15 5	5 3 10	4 5 15	7 12 15	8 7 0	3 14 10	0 8 4	8 11 14	0	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3 12 0	4 0 14	1 14 0	5 0 4	4 3 3	7 8 0	8 12	3 12 0	0 10 0	8 6 4	0	2	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3 9 12	3 14 4	1 12 14	4 13 4	4 0 4	7 3 8	7 12	3 9 12	0 10 0	8 7 8	0	2	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3 7 11	3 12 0	1 11 15	4 10 7	3 14 4	6 13 6	7 8 0	3 7 14	9 4 14	7 2 8	0	2	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3 5 8	3 9 12	1 10 13	4 7 13	3 12 0	6 11 1	7 3 8	5 10 8	8 15 10	7 8 0	0	2	7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Affize to be set in averdupois weight, and in the proportions directed by the tables, for the several sorts of bread.

*Secl. 5.* “ And be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September* one thousand seven hundred and fifty eight, every affize which shall, from time to time, be set in any city, town corporate, hundred, division, liberty, rape or wapentake, in pursuance of this act, shall be always set in averdupois weight, of sixteen ounces to the pound, and not *Troy Weight*, and in the several proportions directed in or by the said tables above set forth, or as near the same as may be, as to the several sorts of bread in this act specified; and that the said tables shall extend as well to such bread which shall be made with the flour of wheat mixed with the flour of other grain, as also to bread which shall be made with the flour of other grain or grains than wheat, which shall be publickly licenced and allowed to be made into bread, in any place or places in pursuance of this act; and that the affize of all such mixed bread shall be set and ascertained as near as may be, according to the said tables.

Return to be made weekly to the court of mayor and aldermen of London, by the meal weighers, of the prices which the several kinds of grain, meal, and flour, fit for bread, publickly sell for in the markets of the city; the prices to be entered by them on a certain day in a book to be kept in the town clerk's office; and the affize and price of bread to be set the next day; and to take place according to order, and continue till a new affize be set;

*Secl. 6.* “ And be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September*, the respective prices which the several kinds of grain, meal and flour, fit and proper to make the different sorts of bread which shall be allowed to be made in pursuance of this act, shall, from time to time, *bona fide*, sell for in the markets or places in *London*, where such grain, meal and flour shall be openly and publickly sold during the whole market, and not at particular times thereof, or on particular contracts only, shall, from time to time, be given in and certified on oath, on some certain day in every week, as the court of mayor and aldermen of the city of *London* shall, from time to time, appoint, by the meal weighers of the said city of *London*, or such other persons as the said court of mayor and aldermen in *London* shall, from time to time, direct; and shall also on some certain day in every week, to be appointed by the said court of mayor and aldermen in *London*, be entered by such meal weighers, or other persons to be appointed as aforesaid, in writing under their hands, in some book to be for that purpose provided by the said city of *London*, and kept at the town clerk's office in the said city: And the next day, after every such price shall be so given in and certified as aforesaid, the affize and weight of all sorts of bread to be sold or exposed to sale by any person within the limits of their jurisdiction, and the price to be paid for the same respectively, shall, from time to time, be set by the said court of mayor and aldermen in *London*, if the said court shall then sit, and if such court shall not then sit, by the mayor of the said city for the time being; and that the affize of bread which shall be so set in *London* shall take place from such time as the said court shall order, and be in force for the said city of *London* and the liberties thereof, and the weekly bills of mortality (the city of *Westminster* and liberties thereof, the borough of *Southwark*, and weekly bills of mortality in the county of *Surry*, excepted) until a new or other affize of bread in *London* shall be set; and that after the fixing or setting of every such affize of bread, by the said court of mayor and aldermen of *London*, or the mayor of the said city for the time being, when the said court of mayor and aldermen of

*London*

*London* shall not fit, the assize so from time to time set shall, with all convenient speed, after setting thereof, be made public in such manner as the said court of mayor and aldermen shall order or direct: But before any advance or reduction shall in any week be made by the said court of mayor and aldermen, or the mayor of the said city of *London* for the time being, in the price of bread, the meal weighers of the said city of *London* for the time being, or such other persons as the said court of mayor and aldermen shall from time to time appoint to return the price of grain, meal and flour, shall leave in writing at the common hall of the company of bakers in the said city of *London*, a copy of every return of the price of grain, meal and flour, which they shall make, and enter in such book to be provided and kept at the town clerk's office as aforesaid, some time of the same day on which such meal weighers or other persons shall make every such return and entry as aforesaid; to the intent that the said company of bakers may the morning of the next day, after every such return and entry shall be made, and before any assize shall be set, from time to time, have an opportunity to offer to the said court of mayor and aldermen, if such court shall then sit, and if such court shall not then sit, to the mayor of the said city of *London* for the time being, all such objections as the said company of bakers shall have and think fit to offer against any advance or reduction being that day made in *London* in the price of bread.

and to be published forthwith. Before any advance or reduction be made in the price of bread, the meal weighers are to leave at the bakers hall a copy of the returns made that day, that the company may have time to object thereto, before the assize be set.

*Stat. 7.* " And be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September*, the court of mayor and aldermen of every other city, where there shall be any such court, and when such court shall sit; and where there shall be no such court, or, there being any such, when the same shall not sit, the mayor, bailiffs, or other chief magistrate or magistrates of every such other respective city, and in towns corporate, or boroughs, the mayor, bailiffs, aldermen, or other chief magistrate or magistrates for the time being of every such town corporate or borough; or two or more justices of the peace in such towns and places where there shall be no such mayor, bailiffs, aldermen, or chief magistrates; shall and may severally and respectively, from time to time, as there shall be occasion, within their several and respective jurisdictions, cause the respective prices, which the several sorts of grain, meal and flour, fit and proper to make the different sorts of bread which shall be allowed to be made in every such other respective city, town corporate, borough, town, or place, shall, from time to time, *bona fide*, sell for, in the respective publick markets in or near to every such other town corporate, borough, town, or place, during the whole market, and not at particular times thereof, or on particular contracts only, from time to time be given in and certified, upon oath, unto such court, mayor, bailiffs, aldermen, chief magistrate or magistrates, or justices, as aforesaid respectively, within their several jurisdictions, in such manner, and by such person or persons, and on such day in every week, as any such respective court, mayor, bailiffs, aldermen, chief magistrate or magistrates, or justices, as aforesaid, within their respective jurisdictions, shall from time

The court of mayor and aldermen, and magistrates, &c. in other cities, towns, and boroughs, may, in like manner, cause returns to be made them of the prices which the several sorts of grain, meal and flour, fit for bread, shall be publickly sold at in the markets within their jurisdictions;

the prices to be entered and certified in a proper book; and the assize and price of bread to be set within 2 days after;

to time appoint; and the price which shall be so certified shall, from time to time, be entered by the respective person or persons who shall certify the same in some book or books to be provided by such respective person or persons, and kept by him or them for that purpose: And within two days after every such price shall be so returned, the assize and weight of bread for every such other respective city, town corporate, borough, town, and place, and the price to be paid for the same, shall, from time to time, be set by the court of mayor and aldermen of every such other city where there shall be any such court, and when the same shall sit; and when such court shall not sit, by the mayor of every such other respective city; and where there shall be no such court of mayor and aldermen in any such other city, then by the mayor, bailiffs, or other chief magistrate or magistrates of every such other city; and in towns corporate, and boroughs, by the mayor, bailiffs, aldermen, or other chief magistrate or magistrates of every such town corporate, or borough; and by two or more justices of the peace in towns or places where there shall be no such mayor, bailiffs, aldermen, or chief magistrate or magistrates: And the assize and weight of bread, and price to be paid for the same, which shall be so from time to time set in every such other city, and in every town corporate, or borough, and in every town and place where there shall be no such mayor, bailiffs, aldermen, or chief magistrate or magistrates, as aforesaid, shall commence and take place on such day in every week, and be in force for such time, not exceeding seven days from the setting of every such assize, and shall be made publick in such manner, as such court of mayor and aldermen in every such other city where there shall be any such court, and when the same shall sit; and where there shall be no such court of mayor and aldermen, or there being any such, when the same shall not sit, as the mayor, bailiffs, or other chief magistrate or magistrates, as aforesaid, of every such other city; and as the mayor, bailiffs, aldermen, or other chief magistrate or magistrates, as aforesaid, of every such town corporate, or borough; and in towns and places where there shall be no such mayor, bailiffs, aldermen, or chief magistrate or magistrates, as aforesaid, as any two justices, as aforesaid, shall, within their respective jurisdictions, from time to time direct.

and to take place, and continue (not exceeding 7 days) and to be published, as the court or magistrates shall direct.

Two or more justices within their jurisdictions, may set an assize of bread, and cause returns to be made by the clerks of the neighbouring markets of the price at which grain, meal and flour shall be there sold;

*Set. 8.* " And be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September*, if any two or more justices of the peace of counties at large, ridings or divisions, shall at any time think fit to set an assize of bread, for any place or places within the limits of their respective jurisdictions, then, and in any such case, it shall be lawful for any such two or more justices, within the limits of their respective jurisdictions, to cause the price, which grain, meal and flour, fit to make the several sorts of bread which shall be made for sale in any such place or places, shall, from time to time, *bona fide*, sell for in the respective public corn market or corn markets, in or near any such place or places respectively, during the whole market, and not at particular times thereof, or on special contracts only, to be from time to time given, and certified on oath, to them at their respective houses or places

of

of abode, in any such county, riding, or division, on such day in every week, as any such two or more justices shall for that purpose fix on and appoint, by the respective clerks of the market of the several markets in or near such respective place or places, or such other person or persons as any such two or more justices as aforesaid respectively, within their respective jurisdictions, shall for that purpose appoint; and that the price of grain, meal and flour, which shall be so returned, shall, from time to time, be entered, by the respective person or persons who shall so return the same, in some book or books to be provided by him or them, and kept for that purpose; and within two days after any such return of the price of grain, meal and flour, shall be made to any such two or more justices, as aforesaid, the price and assize of bread may be by them, or any two of them, set for every such place or places, for any time not exceeding fourteen days from every setting thereof: And the assize which shall be so from time to time set, shall commence and be in force, at such time after every setting thereof, and be made public in such place or places for which the same shall be so set, in such manner as the justices who shall set the same, shall order or direct.

*Sec. 9.* " And be it further enacted by the authority aforesaid, That any maker of bread for sale in any such other city, town corporate, borough, or place, where the price and assize of bread, in pursuance of this act, shall at any time be thought proper to be set, shall have liberty, at all seasonable times, in the day time, the next day after every return of the price of grain, meal and flour, shall be made for any such other city, town corporate, borough, town, or place, and entered in the proper book hereby directed to be provided and kept for that purpose, to see the entry which shall be made in such book, of the price of grain, meal and flour, without paying any thing for the same; to the intent that every such maker of bread for sale may have an opportunity, on the said next day after any such entry as aforesaid shall be made as hereby is directed, to offer to any such court, mayor, bailiffs, aldermen or other chief magistrate or magistrates, or justices, as aforesaid, who shall think fit to set any such assize of bread within their respective jurisdictions, and before any such assize shall be set, such objections as any such maker of bread for sale can reasonably make against any advance or reduction being at any time made in the assize or price of bread in any such other city, town corporate, borough, town or place.

*Sec. 10.* " And be it further enacted by the authority aforesaid, That no baker or maker of bread for sale shall be liable or compellable to pay any fee, gratuity, or reward, to any person or persons for, or by means of, any assize of bread being at any time set, altered, or published, by virtue of or under this act.

*Sec. 11.* " And be it further enacted by the authority aforesaid, That the form of the return, or the certificate of the price of grain, meal or flour, shall, from time to time, be to the purport or effect as followeth; that is to say,

The



The prices of grain, meal and flour, as sold in the corn market in  
in the of the day of 17

The best wheat	_____	_____	_____	at	by the bushel.
The second	_____	_____	_____	at	by ditto.
The third	_____	_____	_____	at	by ditto.
The best wheaten flour	_____	_____	_____	at	by the sack.
Household flour	_____	_____	_____	at	by ditto.
Rye	_____	_____	_____	at	by the bushel.
Rye meal, or flour,	_____	_____	_____	at	by the bushel.
Barley	_____	_____	_____	at	by ditto.
Barley meal	_____	_____	_____	at	by ditto.
Oats	_____	_____	_____	at	by ditto.
Oatmeal	_____	_____	_____	at	by
White peas	_____	_____	_____	at	by the bushel.
White pea flour; or meal,	_____	_____	_____	at	by
Beans	_____	_____	_____	at	by the bushel.
Bean meal, or flour,	_____	_____	_____	at	by

Returns to be signed. To every of which returns the person or persons, who shall be appointed to make the same, shall, from time to time, sign their respective names or marks.

Form of publication of the assize of bread. *Stat. 12.* " And be it further enacted by the authority aforesaid, That when an assize of bread shall at any time be set in pursuance of this act, the same shall be made public in the form or to the effect following; that is to say,

To wit, The assize of bread, set the \_\_\_\_\_ day of \_\_\_\_\_ for  
to take place on the \_\_\_\_\_ day of \_\_\_\_\_ now next ensuing,  
and to be in force for the said \_\_\_\_\_ of \_\_\_\_\_

And in places where penny, twopenny, fixpenny, twelvepenny, and eighteenpenny loaves, shall be made, as followeth;

	lb.	oz.	dr.
The penny loaf wheaten is to weigh	_____	_____	_____
Ditto household is to weigh	_____	_____	_____
The twopenny loaf wheaten is to weigh	_____	_____	_____
Ditto household is to weigh	_____	_____	_____
The fixpenny loaf wheaten is to weigh	_____	_____	_____
Ditto household is to weigh	_____	_____	_____
The twelvepenny loaf wheaten is to weigh	_____	_____	_____
Ditto household is to weigh	_____	_____	_____

The

	lb.	oz.	dr.
The eighteen penny loaf wheaten is to weigh	—	—	—
Ditto household is to weigh	—	—	—

And in places where quartern, half peck and peck loaves, shall be made, then as follows ;

	lb.	oz.	dr.		s.	d.
The peck loaf wheaten is to weigh	—	—	—	and is to be sold for	—	—
Ditto household is to weigh	—	—	—	and is to be sold for	—	—

And the half peck and quarter of a peck loaves of wheaten and household bread are to weigh, from time to time, in proportion to the weight a peck loaf of wheaten or household bread ought to weigh, and are to be fold according to the price a peck loaf of wheaten or household bread respectively is to be fold ; and whenever any bread shall be ordered to be made by any such magistrate or magistrates, or justices, within the limits of their jurisdiction, with the meal or flour of rye, barley, oats, peas or beans, either alone, or mixed with the meal or flour of any other grain or grains, the assize of such bread shall be made public in such manner as the said magistrate or magistrates, or justices, who shall set such assize, shall, from time to time, direct.

Half peck, and quartern loaves, to weigh, and be fold, in due proportion to the peck loaf. Magistrate to direct how the assize of rye, barley, or mixed bread, when ordered to be made, shall be published.

Sett. 13. " And be it also enacted by the authority aforesaid, That in places where any sixpenny, twelpenny, and eighteenpenny loaves shall at any time be ordered or allowed to be made or fold, no peck, half-peck, or quarter of a peck loaves, shall be permitted or allowed at the same time to be there made or fold ; to the intent that one of those sorts of loaves of bread may not be fold designedly, or otherwise, for the other sort thereof, to the injury of unwary people ; upon pain that every one who shall offend in the premises, and shall be thereof convicted in manner herein after prescribed, shall, for every such offence, forfeit a sum not exceeding forty shillings, nor less than twenty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, shall from time to time think fit.

Where bread of a certain denomination and value shall be ordered, or allowed to be made, no bread of a different denomination is to be fold at the same time, under penalty of forfeiting not exceeding

40s. nor less than 20s. for such offence.

Sett. 14. " And be it further enacted by the authority aforesaid, That if, for the better carrying into execution this act, the justices of the peace at a general or quarter sessions of any county, riding or division, shall, at any general or quarter sessions of the peace to be held by them for any such county, riding, or division, think fit to ascertain or fix, that any hundred or hundreds, or other place or places, in any such county, riding or division, ought to be estimated or considered, as of or in any one particular hundred, riding, or quarter sessions, may fix the jurisdiction of any place within a certain district, so as the

assize of bread  
set for the  
same may ex-  
tend thereto.

ding or division, of any such county, riding or division, in order that the assize of bread which shall be set for such particular hundred, place or places, may extend to or comprize such other hundred, place or places, then, and in any such case, it shall be lawful for them so to do; but by so doing thereof, no justice of the peace of any such county, riding or division, shall be excluded or debarred from acting as a justice of the peace in any hundred, riding or division, of any such county, in which any such particular towns, districts or places shall lie, or the assize for them shall be set.

Entry to be  
made by every  
clerk of the  
market, &c.  
in proper  
books, of the  
returns made  
by him,  
and of the  
rate the assize  
and price of  
bread shall be  
set at from  
time to time;  
the said books  
to be open to  
the inspection  
of any inha-  
bitant.

*Sett.* 15. " And be it likewise enacted by the authority aforesaid, That an entry shall, from time to time, be made by every clerk of the market, or other person or persons, who, in pursuance of this act, shall be appointed to make such return and certificate as hereby is directed respectively, in some book or books to be provided and kept by them respectively for that purpose, of every return which shall be made, in pursuance of this act, by them respectively; and also of the rate at which the price, assize and weight of bread shall, from time to time, be set or fixed within the jurisdiction of every such clerk of the market, or other persons who shall, in pursuance of this act, be appointed to make such return or certificate as aforesaid; which book or books any inhabitant of every such city, town corporate, borough, franchise, hundred, riding, division, liberty, lath, rape or wapentake, shall, at all seasonable times in the day-time, have liberty to see and inspect, without any fee or reward being to be paid for the same.

No alteration  
is to be made  
in assize of  
bread, unless  
the price of  
wheat, or  
other grain,  
shall vary 3 d.  
in the bushel  
from the last  
return.

*Sett.* 16. " And be it also enacted by the authority aforesaid, That after an assize of bread shall, at any time after the said twenty-ninth day of *September*, be set, no alteration shall be made therein in any subsequent week, either to rise the same higher, or to sink the same lower, unless and except when the price of wheat, or other grain, shall be returned as having rose three pence each bushel more than the last return made, or having fallen three pence each bushel lower than the said last return; no provision being made by the said assize tables for altering any assize, when the variation in the price of wheat, or other grain, shall not in any week have amounted to, and have been returned three pence a bushel.

Any meal  
weigher, clerk  
of the mar-  
ket, &c. who  
shall neglect  
his duty, or  
make a false  
return;  
and any peace  
officer, who  
shall disobey  
the warrant of  
any magi-  
strate, or jus-  
tice, or other-  
wise neglect  
his duty,

*Sett.* 17. " And be it likewise enacted by the authority aforesaid, That if any meal weigher, clerk of any market, or other person or persons, who shall be appointed to certify or return, as hereby is directed, the price of grain, meal and flour, shall in any wise neglect, omit or refuse to do any matters or things by this act required or directed to be done by him or them respectively, or shall designedly or knowingly make any false certificate or return; or if any constable, headborough or other peace officer, shall refuse or neglect to observe or obey any warrant in writing, which shall be delivered to him under the hand and seal of any magistrate or justice of the peace, or to do any other act requisite to be done by him or them for the carrying this act, or any of the powers or authorities hereby given, into execution; then every person so offending in any of the premises, on being convicted of any such offence, shall forfeit and pay for

for every such offence, any sum not exceeding five pounds, nor less than twenty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order, every time he or they shall so offend and be convicted, as hereby is directed. forfeit not exceeding 5 l. nor less than 20 s.

*Seet. 18.* " And be it further enacted by the authority aforesaid, That in case any buyers or sellers of, or dealers in corn, grain, meal or flour, at any time after the said twenty-ninth day of September, on reasonable request to him, her or them made by the meal weighers of the city of London in London, or by the respective clerks of the markets, or other persons, who, in pursuance of this act, shall be appointed to give in and certify, as hereby is directed, the prices of grain, meal and flour, from the respective markets or places within their respective jurisdictions, shall refuse to disclose and make known to such meal weighers, clerks of the markets, or other persons, who shall be appointed to make such returns and certificates as hereby are directed respectively, and also shall request the same within their respective jurisdictions, the true real prices the several sorts of grain, meal and flour, shall be *bona fide* bought at, or sold, by or for him, her, or them respectively, at any corn market or corn markets, or other place, where corn, grain, meal or flour, is or shall be usually, openly or publickly sold, within the jurisdiction of any such person or persons as aforesaid, who shall request any such account to be given to him or them; or shall knowingly give in to any such meal weigher, clerk of the market, or other person, who shall be appointed in pursuance of this act to give in and certify the price of grain, meal and flour, any false or untrue price or prices of any grain, meal or flour, bought or sold, or agreed so to be, or any price which hath been made by any deceitful means; then, and in every such case, he, she or they so offending, on being convicted of any such offence by the oath of one or more credible witness or witnesses, or solemn affirmation of any credible witness or witnesses, being a *quaker*, or on the confession of the party accused, shall forfeit any sum not exceeding ten pounds, nor less than forty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order, every time he, she or they shall so offend, and be convicted of any such offence. Any buyer, seller, or dealer, who shall refuse to disclose to the meal weighers in London, or clerks of the markets, &c. in other places, the true prices the several sorts of grain, meal and flour, shall be bought or sold at in the publick market, or shall give in a false or collusive price, forfeit not exceeding 10 l. nor less than 40 s.

*Seet. 19.* " And be it further enacted by the authority aforesaid, That if any such court, magistrate or magistrates, justice or justices, as aforesaid, who shall have thought proper to have ordered any return to be made of the price of grain, meal, or flour, within their respective jurisdictions, shall, at any time within the space of three days after any such return shall have been made, suspect that the same was not truly and *bona fide* made, then, and in any such case, it shall be lawful for any such court, magistrate or magistrates, justice or justices, within their respective jurisdictions, to summon before them respectively any person or persons who shall have bought or sold, or shall be suspected to have bought or sold, or agreed to buy or sell, any grain, meal or flour, within their respective jurisdictions, or who shall be thought to be likely to give any information, Where any false return shall be suspected to be made, the court, magistrate, or justice, may, within 3 days, summon any buyer or seller, or other person likely to give information,

and examine them upon oath, touching the prices of grain, meal and flour, within 7 days before ; and any person who shall not appear thereto, without just cause shewn, or shall refuse to give evidence,

forfeits not exceeding 10l. nor less than 40 s. and forswearing himself, incurs the penalties of perjury. Party summoned, not obliged to travel above 5 miles from the place of his abode. When an order shall be made for making bread for sale of any other grain than wheat, or of mixed meal or flour; Bide sto com form to such order, and make the bread of such weight and goodness, and

information concerning the premises, and to examine them respectively upon their several oaths touching the rates and prices the several sorts of grain, meal and flour, or any of them, were there really and *bona fide* bought at, or sold for, or agreed so to be, by him, her or them, respectively, at any time or times within the space of seven days preceding the summoning of him, her or them, respectively: And if any person or persons, who shall be so summoned as aforesaid, shall neglect or refuse to appear on such summons (and proof shall be made on oath of such summons having been duly served upon him, her or them, for that purpose) or if any person or persons so summoned shall appear, and neglect or refuse to answer such lawful questions touching the premises, as shall be proposed to him, her or them, by any such court, magistrate or magistrates, justice or justices, as aforesaid, within their respective jurisdictions, without some just or reasonable excuse, to be allowed of by any such court, magistrate or magistrates, justice or justices, as aforesaid, he, she or they, so offending, on being convicted of any such offence, either by the oath of one or more credible witness or witnesses, or his, her or their own confession, before any such court, magistrate or magistrates, justice or justices, shall, on every such conviction, forfeit and pay any sum not exceeding ten pounds, and not less than forty shillings, as any such court, magistrate or magistrates, justice or justices shall think fit and order: And if any person, who shall be so examined on oath, shall wilfully forswear him or herself, every such person shall be subject and liable to be prosecuted as for perjury, by indictment or information by due course at law; and, if convicted, shall be liable to the penalties persons convicted of wilful and corrupt perjury are subject and liable to; provided that the party or parties so summoned be not obliged to travel above five miles from the place or places of his, her or their abode.

*SECT. 20.* " And be it further enacted by the authority aforesaid, That whenever any court as aforesaid, magistrate or magistrates, or justices of the peace, shall order any bread to be made within their respective jurisdictions, of or with the flour or meal of any other grain or grains than wheat, or to be mixt with the flour of wheat, or to be made with the flour or meal of any other sort or sorts of grain or grains, either separate or mixed together, all persons who shall make any bread for sale, in any place where any such order or orders shall at any time be made, shall, from time to time, make bread with such mixed meal or flour, in every such place and places, in such manner as they shall be required and ordered by any such court, magistrate or magistrates, or justices, as aforesaid, within their respective jurisdictions, and shall, from time to time, make the same of such weight and goodness, and shall sell the same at such prices, as any such court, magistrate or magistrates, or justices, within their respective jurisdictions, shall from time to time order or direct; upon pain that every person who shall at any time offend in the premises, and shall be convicted of any such offence in the manner herein after prescribed by this act, shall forfeit any sum not exceeding five pounds, nor less than forty shillings, as the magistrate or magistrates before whom any such offender or offenders shall be

be convicted shall think fit and order, every time he, she or they shall so offend and be convicted.”

at such price, as shall there-in be directed, on penalty of forfeiting not exceeding 5 l. nor less than 40 s.

*Secl. 21.* “ And be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of *June* one thousand seven hundred and fifty-eight, the several sorts of bread which shall be made for sale, or sold, or exposed to or for sale, in any place or places, shall always be well made, and in their several and respective degrees, according to the goodness of the several sorts of meal or flour whereof the same ought to be made; and that no allum, or preparation or mixture in which allum shall be an ingredient, or any other mixture or ingredient whatsoever (except only the genuine meal or flour which ought to be put therein, and common salt, pure water, eggs, milk, yeast and barm, or such leaven as shall at any time be allowed to be put therein by the court, or person or persons who shall, by virtue of this act, have set an assize of bread, for the place or places where any such leaven shall be used, and where no such assize shall have been set, then such leaven as any magistrate or magistrates, justice or justices of the peace, within his or their jurisdiction, shall allow to be used in making of bread) shall be put into, or in any wise used in making dough, or any bread to be sold, or as or for leaven to ferment any dough, or on any other account, in the trade or mystery of making bread, under any colour or pretence whatsoever, upon pain that every person (other than a servant or journeyman) who shall knowingly offend in the premises, and shall be convicted of any such offence, either by his, her or their own confession, or by the oath of one or more credible witnesses or witnesses, before any such magistrate or magistrates, justice or justices of the peace, within the limits of his or their jurisdiction, shall, on every such conviction, forfeit and pay any sum of money not exceeding ten pounds, and not less than forty shillings; or shall, by warrant under the hand and seal, or hands and seals, of any such magistrate or magistrates, justice or justices, within his or their respective jurisdiction, be apprehended and committed to the house of correction, or some prison of the county, city, town corporate, borough, riding, division, or place, where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain and be kept to hard labour for any time not exceeding one calendar month, nor less than ten days, from the time of such commitment, as any such magistrate or magistrates, justice or justices, shall think fit and order; and if any servant or journeyman baker shall knowingly offend in the premises, and shall be convicted of any such offence, either by his, her or their own confession, or by the oath of one or more credible witnesses or witnesses, before any such magistrate or magistrates, justice or justices of the peace within the limits of his or their jurisdiction, he, she or they, who shall so offend, shall, on every such conviction, forfeit and pay any sum of money not exceeding five pounds, and not less than twenty shillings; or shall, by warrant under the hand and seal, or hands and seals, of any such magistrate or magistrates, justice or justices, within his or their respective jurisdiction, be apprehended and committed to the

The several sorts of bread made for sale, are to be always well made, and, in their degrees, according to the goodness of the sorts of meal or flour the same ought to be made of, without any adulteration or mixture except the genuine meal or flour, salt, water, eggs, milk, yeast, and barm, or such leaven as shall be occasionally allowed; upon penalty of the offender forfeiting (not being the servant or journeyman) not exceeding 10 l. nor less than 40 s. or being committed, and kept to hard labour for any time not exceeding 1 month, nor less than 10 days; and if the offender be a servant or journeyman, on penalty of his forfeiting not exceeding 5 l. nor less than 20 s. or being committed, and kept to hard labour for any

time not exceeding 1 month, nor less than 10 days;

and the magistrate may, out of the money of the forfeiture, publish in some news paper the offender's name, place of abode, and offence.

The penalty of adulterating corn, meal, or flour, whether at the time of grinding, dressing, bolting,

or of selling the meal or flour of one sort of grain for another sort;

or any thing mixed, which shall not be of the genuine meal or flour

of the grain the same is sold for; is not to exceed 5l. nor be less than 40s.

Where bread shall be of a different mixture of corn than what it importeth to be of, or is allowed, or where the proportion of the mixture allowed of shall not be duly observed, or where any thing shall be sold as flour, which is not genuine, the offender is to forfeit not exceeding 5l. nor less than 20s.

the house of correction, or some prison of the county, city, town corporate borough, riding, division, liberty or place, where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain and be kept to hard labour for any time not exceeding one calendar month, nor less than ten days, from the time of every such commitment, as any such magistrate or magistrates, justice or justices, shall think fit and order; and it shall and may be lawful for the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, out of the money forfeited, when recovered, to cause the offender's name, place of abode, and offence, to be published in some news paper, which shall be printed or published in or near the county, city or place, where any such offence shall have been committed."

*Seet. 22.* "And be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September*, no person shall knowingly put into any corn, meal or flour, which shall be ground, dressed, bolted, or manufactured for sale, either at the time of grinding, dressing, bolting, or in any wise manufacturing the same, or at any other time or times, any ingredient, mixture, or thing whatsoever; or shall knowingly sell, offer or expose to or for sale, any meal or flour of one sort of grain as or for the meal or flour of any other sort of grain, or any thing as or for, or mixed with, the meal or flour of any grain, which shall not be the real and genuine meal or flour of the grain the same shall import to be, and ought to be, upon pain that every person who shall offend in the premises, and shall be thereof convicted in manner herein after prescribed, shall forfeit and pay, for every such offence, any sum not exceeding five pounds, nor less than forty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit or order."

*Seet. 23.* And be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September*, no person shall knowingly put into any bread, which shall be made for sale, any mixture of meal or flour of any other sort of grain than of the grain the same shall import to be, and shall be allowed to be made of, in pursuance of this act; or shall put into any bread which shall be made for sale, any larger or other proportion of any other or different sort or sorts of grain, or the meal or flour thereof, than what shall be appointed or allowed to be put therein by this act; or any mixture or thing as for or in lieu of flour which shall not really be the genuine flour the same shall import to be, and ought to be; upon pain that every person who shall offend in the premises, and shall be convicted of any such offence in manner herein after prescribed, shall forfeit and pay any sum not exceeding five pounds, nor less than twenty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order, every time he, she or they shall so offend, and be convicted."

*Seet.*

*Seff. 24.* " And be it further enacted by the authority aforesaid, That if any person or persons who shall make any bread for sale, or who send out, or sell, or expose to or for sale, any bread, shall at any time from and after the said twenty-ninth day of *September*, make, send out, sell or expose to or for sale, any bread which shall be deficient in weight, according to the assize which shall be set for any such bread from time to time to be sold at, in pursuance of this act, he, or they so offending in the premises, and being thereof convicted, in manner herein after prescribed, of any such offence, shall forfeit and pay a sum not exceeding five shillings, nor less than one shilling, for every ounce of bread which shall at any time be wanting or deficient in the weight every such loaf ought to be of; and for every loaf of bread which shall be found wanting less than an ounce of the weight the same ought to be of, a sum not exceeding two shillings and six pence, nor less than six pence; as any such magistrate or magistrates, justice or justices, before whom any such bread which shall not be of the due weight the same ought to be, shall be brought, shall think fit to order; so as such bread which shall be complained of as wanting at any time in the weight the same ought to be of, in any city, town corporate, borough, liberty, or franchise, or the jurisdiction thereof, or within the weekly bills of mortality, shall from time to time be brought before some magistrate or magistrates, justice or justices, having jurisdiction in the premises, and shall be weighed before such magistrate or magistrates, justice or justices, within twenty-four hours after the same shall have been baked, sold or exposed to or for sale; and so as such bread which shall be complained of as wanting at any time in the weight the same ought to be of, in any hundred, riding, division, liberty, rape, wapentake or place, shall from time to time be brought before some justice or justices of the peace of such hundred, riding, division, liberty, rape or wapentake, or other place, and shall be weighed before such justice or justices within three days after the same shall have been baked, sold, or exposed to or for sale; unless it shall be made out to the satisfaction of any such magistrate or magistrates, justice or justices, by or on the behalf of the party or parties against whom any such complaint or information shall be made, that such deficiency in weight wholly arose from some unavoidable accident in baking, or otherwise, or was occasioned by or through some contrivance or confederacy.

Where bread shall be made under weight,

the offender forfeits not exceeding 5s. nor less than 1s. for every oz. deficient; and if under an oz. not exceeding 2s. 6d nor less than 6d.

provided such bread complained of, if in any city, town corporate, or borough, be weighed before the magistrate, within 24 hours after the same shall be baked, sold, or exposed to sale; and if in any hundred, riding, or division, &c. within 3 days of the baking, or sale thereof;

unless such confederacy.

*Seff. 25.* " And be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September*, every person who shall make for sale, or sell, expose or send out, to or for sale, any sort of bread whatsoever, shall, from time to time, cause to be fairly imprinted or marked on every loaf of each respective sort of bread which he, she or they shall make or sell, or carry out, or expose to or for sale, the *Roman* letters herein after mentioned; that is to say, Upon every loaf of bread which shall be made, sold, carried out, or exposed to or for sale, as wheaten bread, a large *Roman W*; and upon every loaf of bread which shall

All bread made for sale, is to be fairly marked;

the wheaten bread with a large *Roman W*, and household with *H*,

shall



in order to ascertain under what denomination it was made, and ought to be weighed; under penalty not exceeding 20 s. nor less than 5 s.

Bakers demanding or taking a higher price for bread, than what the same shall be set at by the assize; or refusing to sell to any person any of the sorts allowed or ordered to be made, when he shall have more than is necessary for the immediate use of his family or customers,

forfeits not exceeding 40 s. nor less than 10 s.

Bread of any inferior quality to wheaten, is not to be sold at a

shall be made, sold, carried out, or exposed to or for sale, as household or brown bread, a large *Roman H*; and that every person who shall make for sale, or shall sell, carry out, or expose to or for sale, any loaf of any sort of bread, which shall be allowed to be made in pursuance of this act, which shall not be marked pursuant to the directions of this act, so as the same may, on the view thereof, be ascertained, from time to time, under what denomination or sort of bread every such loaf was made, and ought to be weighed (except as to such loaves which shall be rasped after the bespeaking or purchasing thereof, by the particular desire of any person who shall order the same to be so rasped, for his, her or their own use or uses) shall, for every time he, she or they shall offend in the premises, and be thereof convicted in manner herein after prescribed, forfeit and pay a sum not exceeding twenty shillings, nor less than five shillings, as any magistrate or magistrates, justice or justices, before whom the offender shall be convicted, shall direct, for every loaf of bread not marked as hereby is directed.

*Señ. 26.* " And be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September*, no baker, or other person or persons, shall ask, demand or take, for any bread which he, she or they shall sell, or expose to or for sale, any greater or higher price than such bread shall be ascertained to be sold for or at by the court, magistrate or magistrates, or justices, hereby authorized to set the price and assize of bread, within their respective jurisdictions; and that no baker, or other person who shall make any bread for sale, shall refuse or decline to sell any loaf or loaves of any of the sorts of bread, which in pursuance of this act shall be allowed or ordered to be made, to any person or persons who shall tender ready money in payment for the same, at or for the price such bread, by the assize which shall have been set in respect thereof, shall be fixed at, or ascertained to be sold for, when any such baker, or other person who shall make bread for sale, shall have any loaf of any such bread in his or their house, bakehouse, shop, or possession, to be sold, more than shall be requisite for the immediate necessary use of his, her or their own family, or customers; and which it shall be incumbent on such baker, or other person who shall be complained of, for refusing or declining to sell any such bread, to prove before the magistrate or magistrates, justice or justices, to whom any such complaint shall be made, if thereunto required by the party or parties who shall make any such complaint; upon pain that every person who shall be convicted of any such offence, in manner herein after prescribed, shall forfeit and pay a sum not exceeding forty shillings, nor less than ten shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order, every time he, she or they shall so offend and be convicted.

*Señ. 27.* " Provided further, and it is hereby likewise enacted, That from and after the said twenty-ninth day of *September*, no person shall sell, or offer to sale, any bread of an inferior quality to wheaten bread, at a higher price than household bread shall be set at by the assize; and if any person

person shall offend in the premises, he shall forfeit and pay for every such offence, on being convicted thereof, either by his, her, or their confession, or by the oath of one or more credible witness or witnesses, before any magistrate or magistrates, justice or justices, within whose jurisdiction any such offence shall have been committed, the sum of twenty shillings.

*Sett.* 28. " And, that the good design of this statute may be the more effectually accomplished, be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September*, it shall be lawful for any magistrate or magistrates, justice or justices of the peace, within the limits of their respective jurisdictions, and also for any peace officer or officers, authorized by warrant under the hand and seal, or hands and seals, of any such magistrate or magistrates, justice or justices (and which warrant any such magistrate or magistrates, justice or justices, is and are hereby empowered to grant) at seasonable times in the day time, to enter into any house, shop, stall; bakehouse, warehouse or outhouse of or belonging to any baker, or feller of bread, to search for, view, weigh and try all or any the bread, which shall be there found: And if any bread, on any such search, shall be found to be wanting either in the goodness of the stuff whereof the same shall be made, or to be deficient in the due baking or working thereof, or shall be wanting in the due weight, or shall not be truly marked according to the directions of this act, or shall be of any other sort of bread than shall be allowed to be made by virtue of this act; any such magistrate or magistrates, justice or justices, peace officer or peace officers, within the limits of their respective jurisdictions, may seize the same; and any such magistrate or magistrates, justice or justices, may dispose thereof as he or they, in his or their discretion, shall think fit.

higher price than household bread is set at, on penalty of 20s.

Magistrates, justices, or peace officers, properly authorized, may enter in the day time the houses, shops, &c. of bakers, and search for, and weigh, the bread therein; and may seize such as shall be found wanting in goodness, due baking, or weight, or not properly marked, or of any different sort discretion.

than is allowed of, and dispose thereof at their

Where any miller, mealman, or baker, shall be suspected of adulterating meal or flour,

the magistrate, &c. upon information made thereof on oath, may enter the pre-

*Sett.* 29. " And be it further enacted by the authority aforesaid, That if, at any time after the said twenty-ninth of *September*, information shall be given on oath, to any magistrate or magistrates, justice or justices of the peace, that there is reasonable cause to suspect that any miller who grinds any grain for toll or reward, or any person or persons who doth or do dress, bolt, or in any wise manufacture any meal or flour for sale, or any maker of bread for sale, within the limits of the jurisdiction of any such magistrate or magistrates, justice or justices, doth or do mix up with, or put into, any meal or flour ground or manufactured for sale, any mixture, ingredient, or thing whatsoever, not the genuine produce of the grain such meal or flour shall import and ought to be, or whereby the purity of any meal or flour, in the possession of any such miller, mealman, or baker, is or shall be in any wise adulterated; then, and in every such case, it shall be lawful for any such magistrate or magistrates, justice or justices, and also for any peace officer or officers, authorized by warrant or warrants to him or them directed under the hand and seal, or hands and seals of any magistrate or magistrates, justice or justices, within the

limits

misses of such  
suspected per-  
son himself,  
and make  
search, or may  
grant a search  
warrant to  
some peace  
officer;

and such meal  
and flour as  
shall be deem-  
ed to have  
been adulter-  
ated, may be  
seized, toge-  
ther with the  
base mixtures  
and ingredi-  
ents; and if  
seized by a  
peace officer,  
it is to be car-  
ried before a  
magistrate;  
if seized by  
the magi-  
strate, or ad-  
judged by him  
to be adulter-  
ated,

he may dis-  
pose thereof  
as he thinks  
proper;

and the miller,  
mealman, or  
baker, in  
whose pre-  
mises such  
mixture or  
ingredients  
shall be found,  
and adjudged  
to be intended  
to be used in  
adulterating,  
is to forfeit  
upon convic-  
tion,

limits of their respective jurisdictions; and which warrant or warrants every such magistrate and magistrates, justice and justices, is and are hereby empowered to grant; at all seasonable times in the day time, to enter into any house, mill, shop, bake-house, stall, bolting-house, pastry, ware-house or out-house, of or belonging to any such miller, mealman, or baker, and to search and examine whether any mixture, ingredient, or thing, not the genuine produce of the grain such meal or flour shall import and ought to be, shall have been mixed up with, or put into, any meal or flour in the possession of any such miller, mealman, or baker, either in the grinding of any grain at the mill, or in the dressing, bolting, or manufacturing thereof, or whereby the purity of any meal or flour is or shall be in any wise adulterated: And if on any such search it shall appear that any offence hath been committed in any mill, bolting-house, or other place allowed to be searched, contrary to the true intent of this act; then, and in every such case, it shall and may be lawful to and for any magistrate or magistrates, justice or justices of the peace, officer or officers, authorized as aforesaid respectively, within the limits of their respective jurisdictions, to seize and take any meal or flour which shall be deemed, on any such search, to have been adulterated, and all mixtures and ingredients which shall be found and deemed to have been used, or intended to be used, in or for any such adulteration; and such thereof as shall be seized by any officer or officers authorized as aforesaid, shall, with all convenient speed, after seizure thereof, be carried to some magistrate or magistrates, justice or justices of the peace, within the limits of whose jurisdiction the same shall have been so seized: And if any magistrate or magistrates, justice or justices of the peace, who shall make any seizure in pursuance of this act, or to whom any thing seized under the authority of this act shall be brought, shall adjudge that any mixture or ingredients, not the genuine produce of the grain any such meal or flour which shall have been so seized, shall import and ought to be, shall have been put into any such meal or flour, or that the purity of any such meal or flour so seized, was adulterated by any mixture or ingredient put therein; then, and in any such case, every such magistrate or magistrates, justice or justices, is and are hereby required, within the limits of their respective jurisdiction, to dispose of the same as he or they, in his or their discretion, shall, from time to time, think proper.

*Sec. 30.* " And be it further enacted by the authority aforesaid, That every miller, mealman, baker or seller of bread as aforesaid, in whose house, mill, shop, bake-house, stall, bolting-house, pastry, warehouse, out-house, or possession, any mixture or ingredient shall be found, which shall be adjudged by any magistrate or magistrates, justice or justices, to have been lodged there, with an intent to have adulterated the purity of meal, flour or bread, shall, on being convicted of any such offence, either by his, her or their own confession, or by the oath of one or more credible witnesses or witnesses, before any such magistrate or magistrates, justice or justices of the peace, within whose jurisdiction any such offence shall have been committed, forfeit and pay for every such offence, a sum

not exceeding ten pounds, nor less than forty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order; unless the party or parties charged with any such offence, shall make it appear to the satisfaction of the magistrate or magistrates, justice or justices, who shall find or seize any such mixture or ingredients, or before whom the same shall be brought, that such mixture or ingredients was or were not brought or lodged where the same was or were found or seized, with any design or intent to have been put into any meal or flour, or to have adulterated therewith the purity of any meal or flour, but that the same was in the place or places in which the same shall have been so found or seized as aforesaid, for some other lawful purpose; and it shall and may be lawful for the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, out of the money forfeited, when recovered, to cause the offender's name, place of abode and offence, to be published in some news paper which shall be printed or published in or near the county, city or place, where any such offence shall have been committed.

*Sett.* 31. " And be it further enacted by the authority aforesaid, That if any person or persons shall wilfully obstruct or hinder any search as herein is before authorized to be made, or the seizure of any bread, or of any ingredients which shall be found on any such search, and deemed to have been lodged with an intent to adulterate the purity or wholsomeness of meal, flour or bread, or shall wilfully oppose or resist any such search being made, or the carrying away any such ingredients as aforesaid, or any bread which shall be seized, as not being made pursuant to this act, he, she or they, so doing or offending in any of the cases aforesaid, shall, on being convicted thereof in manner herein after prescribed, forfeit and pay for every offence such sum, not exceeding five pounds, nor less than twenty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order.

*Sett.* 32. " Provided always, and be it further enacted by the authority aforesaid, That no person who shall follow, or be concerned in, the business of a miller, mealman or baker, shall be capable of acting, or shall be allowed to act as a magistrate, or justice of the peace, under this act, or in putting in execution any of the powers in or by this act granted; and if any miller, mealman or baker shall presume so to do, he or they so offending in the premises shall, for every such offence, forfeit and pay the sum of fifty pounds to any person or persons who will inform or sue for the same; to be recovered in any of his majesty's courts of record at *Westminster*, by action of debt, bill, plaint or information; wherein no essoin, wager of law, or more than one imparlance, shall be allowed; or by way of summary complaint before the court of session in that part of *Great Britain* called *Scotland*.

*Sett.* 33. " Provided always, and be it also enacted by the authority aforesaid, That if any person, who shall carry on or follow the trade of a baker, shall, at any time after the twenty-ninth day of *September*, make

not exceeding 10 l. nor less than 40 s. unless it be made appear, that the same were not lodged there with such intention, but for some other lawful purpose; and part of the forfeiture may be applied in publishing the offender's name, place of abode, and the offence.

Persons obstructing or opposing any search or seizure, as aforesaid, are to forfeit not exceeding 5 l. nor less than 40 s.

Any miller, mealman or baker, presuming to act as a magistrate or justice in the execution of this act, forfeits 50 l. to the informer. Method of recovery.

Where any baker shall, on complaint, make it appear, that the

offence he was charged with, and paid the penalty of, was occasioned by the wilful default of his journeyman or servant, the magistrate shall issue his warrant for apprehending the party ;

and upon conviction of the offence, shall decree a reasonable recompence to be paid to the master ;

and on non-payment thereof, shall commit the offender ;

to be kept to hard labour for any time not exceeding 1 month, unless payment be sooner made.

All offences against this act may be heard and determined in a summary

complaint to any magistrate or magistrates, justice or justices of the peace, within their jurisdiction, and make appear to them, by the oath of any credible witness, that any offence, which any such person who shall so carry on or follow the said trade of a baker shall have been charged with, and shall have incurred and paid any penalty under this act, shall have been occasioned by or through the wilful neglect or default of any journeyman, or other servant employed by or under any such person who shall so follow or carry on the said trade of a baker ; then, and in any such case, any such magistrate or magistrates, justice or justices, may and are hereby required to issue out his or their warrant, under his or their respective hands and seals, for bringing any such journeyman or servant before any such magistrate or magistrates, justice or justices, or any magistrate or justice of the county, city, riding, division or place, where the offender can be found ; and, on any such journeyman or servant being thereupon apprehended, and brought before any such magistrate or magistrates, justice or justices, he or they, within their respective jurisdictions, is and are hereby authorized and required to examine into the matter of such complaint ; and, on proof thereof being made upon oath, to the satisfaction of any such magistrate or magistrates, justice or justices of the peace who shall hear such said complaint, then any such magistrate or magistrates, justice or justices, is and are hereby directed and authorized, by any order under his or their respective hand or hands, to adjudge and order what reasonable sum of money shall be paid by any such journeyman or servant to his master or mistress, as or by way of recompence to him or her, for the money he or she shall have paid by reason of the wilful neglect or default of any such journeyman or servant : And if any such journeyman or servant shall neglect or refuse, on his conviction, to make immediate payment of the sum of money which any such magistrate or magistrates, justice or justices, shall order him to pay by reason of such his said wilful neglect or default ; then any such magistrate or magistrates, justice or justices, within their respective jurisdictions, is and are hereby authorized and required, by warrant under his or their hands and seals, to cause every such journeyman or servant to be apprehended and committed to the house of correction, or some other prison of the county, riding, division, city, town corporate, borough, or place, in which any such journeyman or servant shall be apprehended or convicted, to be there kept to hard labour for any time not exceeding one calendar month from the time of such commitment, as to such magistrate or magistrates, justice or justices, shall seem reasonable, unless payment shall be made of the money ordered after such commitment, and before the expiration of the said term of one calendar month.

*Sett. 34.* “ And, for the better and more easy recovery of the several penalties and forfeitures to be incurred by disobedience to this act, and the powers herein contained, and disposing of the money which shall be forfeited by breach or non-observance of any part of this act ; be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the mayor of the said city of *London* for the time being, or any alderman of the said city, within the said city or liberties thereof ; and to and for any other of his majesty’s justices of the peace, or any one of them, within

within their respective counties, ridings, divisions, cities, towns corporate, boroughs, liberties or jurisdictions, to hear and determine, in a summary way, all offences committed against the true intent and meaning of this act; and, for that purpose, to summon before them, or any of them, within their respective jurisdictions, any party or parties accused of being an offender or offenders against the true intent and meaning of this act: And in case the party accused shall not appear on such summons, or offer some reasonable excuse for his default; then, upon oath by any credible witness of any offence committed contrary to the true intent and meaning of this act, any such magistrate or magistrates, justice or justices, shall issue his or their warrant or warrants for apprehending the offender or offenders within the jurisdiction of any such magistrate or magistrates, justice or justices: And upon the appearance of the party or parties accused, or in case he or they shall not appear, on notice being given to, or left for him or them, at his or their usual place of abode, or if he or they cannot be apprehended on a warrant granted against him or them as herein before is directed; then, and in any such case, any such magistrate or magistrates, justice or justices, is and are hereby authorized and required to proceed to make inquiry touching the matters complained of, and to examine any witness or witnesses, who shall be offered on either side, on oath, as aforesaid, and which every such magistrate or magistrates, justice or justices, is and are hereby authorized, empowered and required to administer; and, after hearing of the parties who shall appear, and the witnesses who shall be offered on either side, such magistrate or magistrates, justice or justices, shall convict, or acquit, the party or parties accused: And if the penalty, or money forfeited, on any such conviction, shall not be paid within the space of twenty-four hours after any such conviction, every such magistrate or magistrates, justice or justices, shall thereupon issue a warrant or warrants under his hand and seal, or their hands and seals, respectively, directed to any peace officer or officers within their respective jurisdictions, empowering him or them to make distress of the goods or chattels of the offender or offenders: And if any offender shall convey away his goods out of the jurisdiction of any such magistrate or magistrates, justice or justices, before whom he was convicted, or so much thereof that the penalty cannot be levied, then some magistrate or justice within whose jurisdiction the offender shall have removed his goods, shall back the warrant granted by any such magistrate or justice, magistrates or justices; and thereupon the penalty forfeited shall be levied on the offender's goods and chattels, by distress and sale thereof; and if within five days from the distress being taken, the money forfeited shall not be paid, the goods seized shall be appraised and sold, rendering the overplus (if any) after deducting the penalty or forfeiture, and the costs and charges of the prosecution, distress and sale, to the owner; which charges shall be ascertained by the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall have been so convicted, or by the magistrate or justice who backed the warrant, if either of them shall continue alive; and if not, by some other magistrate

way, by magistrates within their respective jurisdictions.

Offenders may be summoned;

and not appearing there-to, or offering a reasonable excuse, may be apprehended.

Matter of the complaint to be enquired into upon oath, and examination of witnesses;

and the party to be convicted or acquitted thereupon.

The penalty on nonpayment thereof within 24 hours, is to be levied by distress and sale; and if the goods and chattels of the party shall be removed into another jurisdiction, the magistrate thereof is to back the warrant of distress; and the distress, if not redeemed within 5 days, is to be appraised and sold; and all charges, after settled by the

magistrate, to or justice of the county, riding, division, city or place, in which the offender shall have been convicted; and for want of such distress, then every such magistrate or justice, within whose respective jurisdiction any such offender or offenders shall reside or be, shall, on the application of any prosecutor or prosecutors, and proof made of the conviction and nonpayment of the penalty and charges, by warrant under his hand and seal, commit every such offender or offenders to the common gaol or house of correction of the city or county, riding, division, or place, where such offender or offenders shall be found; there to remain for the space of one calendar month from the time of such commitment, unless, after such commitment, payment shall be made of the said penalty or forfeiture, costs and charges, before the expiration of the said one calendar month; and all such penalties and forfeitures, when recovered, shall be paid to the informer.

unless payment be sooner made.

Power to summon material evidences,

and of compelling, by warrant, to appear, such as shall not appear upon summons.

Witnesses to be examined on oath; and on refusal, without just cause shown,

*Sec. 35.* " And be it further enacted by the authority aforesaid, That if it shall be made out by the oath of any credible person or persons to the satisfaction of any magistrate or magistrates, justice or justices, that any one within the jurisdiction of any such magistrate or magistrates, justice or justices, is likely to give or offer material evidence on behalf of the prosecutor of any offender or offenders against the true intent and meaning of this act, or on behalf of the person or persons accused, and will not voluntarily appear before such magistrate or magistrates, justice or justices, to be examined, and give his, her or their evidence concerning the premises, every such magistrate or magistrates, justice or justices, is and are hereby authorized and required to issue his or their summons to convene every such witness and witnesses before any such magistrate or magistrates, justice or justices, at such seasonable time as in such summons shall be fixed; and if any person so summoned shall neglect or refuse to appear at the time by such summons appointed, and no just excuse shall be offered for such neglect or refusal, then (after proof by oath of such summons having been duly served upon the party or parties so summoned) every such magistrate and magistrates, justice and justices, is and are hereby authorized and required to issue his or their warrant under his hand and seal, or their hands and seals, to bring every such witness or witnesses before any such magistrate or magistrates, justice or justices; and on the appearance of any such witness before any such magistrate or magistrates, justice or justices, every such magistrate or magistrates, justice or justices, is and are hereby authorized and empowered to examine upon oath every such witness: And if any such witness on his or her appearance, or on being brought before any such magistrate or magistrates, justice or justices, shall refuse to be examined on oath concerning the premises, without offering any just excuse for such refusal, any such magistrate or magistrates, justice or justices, within the limits of his or their jurisdiction, may, by warrant under his hand and seal, or their hands and seals, commit any person or persons so refusing to be examined, to the public prison of the county, riding, division, city, liberty or place, in which the person or persons so refusing to be examined shall be, there to remain

remain for any time not exceeding fourteen days, nor less than three days, may be committed for 14 days, but not less than 3. as any such magistrate or magistrates, justice or justices, shall direct.

Se<sup>t</sup>. 36. " And be it further enacted by the authority aforesaid, That the magistrate or magistrates, justice or justices, before whom any person shall be convicted, in manner prescribed by this act, shall cause such respective conviction to be drawn up in the form, or to the effect following (that is to say) Conviction to be drawn up in the following form.

(To wit) **B**E it remembered, That on this day of in the year of the reign of A. B. is convicted before majesty's justices of the peace for the said county of or for the riding or division of the said county of or for the city, liberty or town of (as the case shall happen to be) for and do adjudge him, her (or them) to pay and forfeit for the same, the sum of  
Given under the day and year aforesaid.

Se<sup>t</sup>. 37. " And be it further enacted by the authority aforesaid, That no certiorari, letters of advocation, or of suspension, shall be granted, to remove any conviction, or other proceedings had thereon in pursuance of this act. No conviction, or other proceedings, may be removed by certiorari, &c.

Se<sup>t</sup>. 38. " Provided always, and it is hereby further enacted by the authority aforesaid, That if any person convicted of any offence punishable by this act, shall think him, her or themselves aggrieved by the judgment of the magistrate or magistrates, justice or justices, before whom he, she or they shall have been convicted, such person shall have liberty, from time to time, to appeal to the justices at the next general or quarter-sessions of the peace, which shall be held for the county, riding, division, city, liberty, town or place, where such judgment shall have been given, and that the execution of the said judgment shall in such case be suspended; the person so convicted, entering into a recognizance at the time of such conviction, with two sufficient sureties in double the sum which such person shall have been adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices at their said next general or general quarter-sessions; which recognizance the magistrate or magistrates, justice or justices, before whom such conviction shall be had, is and are hereby empowered and required to take; and the justices in the said general or general quarter-sessions are hereby authorized and required to hear and finally determine the matter of every such appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party: And if, upon hearing the said appeal, the judgment of the magistrate or magistrates, justice or justices, before whom the appellant or appellants shall have been convicted, shall be affirmed, such appellant or appellants shall immediately pay down the sum he, she or they shall have been adjudged to. Persons aggrieved by the judgment of any magistrate or justice, may appeal to the next general or quarter-sessions, and execution of judgment is to be thereupon suspended. Appellant is to enter into recognizance, and give security, to prosecute the appeal with effect, &c. and the justices in their said sessions are to hear and determine the matter thereof, and to award costs thereupon.



If the former judgment be affirmed, the appellant is to pay down the forfeiture and costs; and on default is to be committed.

If the judgment be reversed, and the appellant be discharged of the conviction, costs are to be awarded and recovered against the informer.

If the conviction shall happen to be within 6 days of the sessions, appeal may then be made to the sessions following.

Limitation of actions against magistrates, and justices, and peace officers.

Act of 24 Geo. 2. extended to magistrates and justices acting under authority of this act.

to forfeit, together with such costs, as the justices in their said general or general quarter-sessions, shall award to be paid to the prosecutor or informer, for defraying the expences sustained by reason of any such appeal; and in default of the appellant's paying the same, any two such justices or any one magistrate or justice of the peace, having jurisdiction in the place into which any such appellant or appellants shall escape, or where he, she or they shall reside, shall and may, by warrant under their hands and seals, or his hand and seal, commit every such appellant and appellants to the common gaol of the county, city, riding, division or place, where he, she or they shall be apprehended, until he, she or they shall make payment of such penalty, and of the costs and charges which shall be adjudged on the conviction, to the informer; but if the appellant or appellants in any such appeal shall make good his, her or their appeal, and be discharged of the said conviction, reasonable costs shall be awarded to the appellant or appellants against such informer or informers, who would (in case of such conviction) have been intitled to the penalty to have been recovered as aforesaid; and which costs shall and may be recovered by the appellant or appellants against any such informer or informers, in like manner as costs given at any general or general quarter-sessions of the peace, are recoverable."

*Sec. 39.* "Provided also, and be it further enacted by the authority aforesaid, That if any such conviction shall happen to be made within six days before any general or general quarter-sessions of the peace, which shall be held for the county, riding, division, city, town corporate, borough or place where such conviction shall have been made, then the party or parties who shall think him, her or themselves aggrieved by any such conviction, shall and may, on entering into a recognizance in manner and for the purposes before directed, be at liberty to appeal either to the then next or the next following general or general quarter-sessions of the peace, which shall be held for any such county, riding, division, city, town corporate, borough, liberty or place, where any such conviction shall have been made."

*Sec. 40.* "And be it further enacted by the authority aforesaid, That every action or suit which shall be brought or commenced against any magistrate or magistrates, justice or justices, or any peace officer or officers, for any matter or thing done or committed by virtue of, or under this act, shall be commenced within six months next after the fact committed, and not afterwards; and shall be laid or brought in the county, city or place, where the matter in dispute shall arise, and not elsewhere; and that the statute made in the twenty-fourth year of his present majesty's reign, intituled, An act for rendering the justices of the peace more safe in the execution of their office; and for indemnifying constables and others, acting in obedience to their warrants; so far as the said act relates to the rendering the justices more safe in the execution of their office, shall extend and be construed to extend to the magistrate and magistrates, justice and justices of the peace, acting under the authority or in pursuance of this act; and that no action or suit shall be had or commenced against, nor shall any

any writ be sued out, or copy of any writ be served upon any peace officer or officers, for any thing done in the execution of this act, until seven days after a notice in writing shall have been given to, or left for him or them, at his or their usual place of abode, by the attorney for the party intending to commence such action; which notice in writing shall contain the name and place of abode of the person intending to bring such action, and also of his attorney, and likewise the cause of action or complaint: And any peace officer or officers shall be at liberty, and may, by virtue of this act, at any time within seven days after any such notice shall have been given to or left for him, tender, or cause to be tendered, any sum or sums of money, as amends for the injury complained of, to the party complaining, or to the attorney named in any such notice; and, if the same is not accepted of, the defendant or defendants in any such action or actions may plead such tender in bar of such action or actions, together with the general issue, or any other plea, with leave of the court in which the action shall be commenced: And if upon issue joined on such tender, the jury shall find the amends tendered to have been sufficient, they shall find a verdict for the defendant or defendants: And in every such case, or if the plaintiff shall become nonsuit, or discontinue his action; or if judgment shall be given for the defendant or defendants upon demurrer; or if any action or suit shall be brought after the time limited by this act for bringing the same, or shall be brought in any other county or place than as aforesaid; then, and in any such case the jury shall find for the defendant or defendants; and the defendant or defendants shall be intitled to his or their costs: But if the jury shall find that no such tender was made, or that the amends tendered were not sufficient, or shall find against the defendant or defendants, on any plea or pleas by him or them pleaded; they shall then give a verdict for the plaintiff, and such damages as they shall think proper, and the plaintiff shall thereupon recover his costs against every such defendant and defendants."

Sec. 41. "And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced against any person or persons for any thing done in pursuance of this act, the defendant or defendants in any such action or suit may plead the general issue, and give this act and the special matter, in evidence, at any trial to be had thereupon; and that the same was done in pursuance and by the authority of this act: And if it shall appear so to have been done, or if a verdict shall be recorded for the defendant or defendants; or if the plaintiff shall be nonsuited, or discontinue his action, after the defendant or defendants shall have appeared; or if judgment shall be given upon a verdict or demurrer, against the plaintiff or plaintiffs; the defendant or defendants in every such action shall and may recover treble costs; and have the like remedy for the same as any defendant or defendants hath or have in other cases by law for recovery of his, her, or their costs."

Sec. 42. "Provided always, That no person shall be convicted, in manner aforesaid, for any of the before-mentioned offences, unless the prosecution, begun on this act, may plead the general issue; and obtaining a verdict, recover treble costs. Prosecution to be commenced in within 3 days

after the of- in order to such conviction, be commenced within three days next after the  
fence. offence committed.

General refer- *Seft.* 43. Provided also, and be it enacted, That this act, or any thing  
vation of herein contained, shall not extend to prejudice any right or custom of the  
rights. city of *London*, or the practice there used, or any right or custom of any  
lord or lords of any leet, to set, inquire and punish the breach of assize of  
bread, within their respective leets or views of frank pledge, or the right of  
any clerk or clerks of the market in any place.

Reservation of *Seft.* 44. Provided further, and it is hereby likewise enacted, That neither  
rights of the this act, or any thing herein contained, shall extend, or be construed to ex-  
dean and high tend, to prejudice the ancient right or custom of the dean of the collegiate  
steward of church of *Saint Peter Westminster*, or the high steward of the city of  
*Westminster*, *Westminster*, and the liberties thereof, or his deputy, or any of them,  
to set an assize to set, ascertain and appoint the assize and weight of all sorts of bread  
of bread, with to be sold or exposed to sale within the said city of *Westminster*, and the  
in the city and liberties thereof; but they, and every of them, shall and may severally  
liberty of and respectively, from time to time, as there shall be occasion, set, ascertain  
*Westminster*; and appoint, within the said city of *Westminster* and the liberties thereof,  
according to the true intent and meaning of this act, the assize and weight  
of all sorts of bread which shall be made, sold or exposed to sale, by any  
person or persons within the limits of the said city of *Westminster* and the  
liberties thereof; and shall and may inquire and punish the breach of every  
such assize and weight of bread, as fully and freely in all respects, as they,  
or any of them, have hitherto been accustomed to do, and as if this act had  
never been made; any thing contained to the contrary thereof notwith-  
standing."

and punish  
any breach  
thereof.

Reservation of *Seft.* 45. " Provided likewise, That neither this act, nor any thing here-  
rights to the in contained, shall extend, or be construed to extend, to prejudice the  
universities of ancient right or custom of the two universities of *Oxford* or *Cambridge*, or  
Oxford and either of them, or of their or either of their clerks of the market, or the  
Cambridge, to practice within the several jurisdictions of the said universities, or either of  
to set an assize of them, used, to set, ascertain and appoint the assize and weight of all sorts of  
bread within bread to be sold or exposed to sale within their several jurisdictions; but  
their jurisdic- that they, and every of them, shall and may severally and respectively, from  
tions; time to time, as there shall be occasion, set, ascertain and appoint, within  
their several and respective jurisdictions, the assize and weight of all sorts of  
bread to be sold or exposed to sale by any baker or other person whatsoever,  
within the limits of their several jurisdictions; and shall and may inquire  
and punish any and punish the breach thereof, as fully and freely in all respects as they  
breach there- used to do, and as if this act had never been made; any thing herein con-  
of. tained to the contrary thereof notwithstanding."

**Stat.** 32 Geo. 2. c. 18. [A. D. 1758.] made, among other purposes, "To appropriate certain penalties mentioned in an act made in the last session of parliament, for the due making of bread; and to regulate the price and assize thereof; and to punish persons who shall adulterate meal, flour or bread."

**Sec.** 2. And whereas several of the penalties or forfeitures made payable by an act passed in the thirty-first year of his present majesty's reign, intituled, "An act for the due making of bread; and to regulate the price and assize thereof; and to punish persons who shall adulterate meal, flour or bread"; were not by such said last mentioned act appropriated how or to whom the same should, when paid or recovered, go or be distributed; Be it therefore further enacted by the authority aforesaid, That such of the penalties or forfeitures which, from and after the twenty-fourth day of June one thousand seven hundred and fifty-nine, shall incur or become payable by or under the said last-mentioned act, or by reason of any thing therein contained (as by the said act are not particularly disposed of, or appropriated, how or to whom the same should go or be applied) shall, when the same shall be recovered or paid, go and be distributed in manner following; that is to say, one moiety thereof, where any offender or offenders shall be convicted, either by his, her or their own confession, or by the oath of one or more credible witnesses or witnesses, shall go and be paid to the person or persons, who shall inform against and prosecute to conviction, any such offender or offenders; and the other moiety thereof, and also all penalties and forfeitures, which, from the said twenty-fourth day of June one thousand seven hundred and fifty-nine, shall incur, be due or payable, under the said last-mentioned act, on the weighing, trying or seizure of any bread, by any magistrate or magistrates, justice or justices, shall go and be applied for the better carrying into execution the purposes of the said last-mentioned act, as any such magistrate or magistrates, justice or justices, within his or their respective jurisdiction, shall from time to time think fit and order."

Distribution of the unappropriated penalties and forfeitures under the said act; viz. one moiety to the prosecutor, where the offender shall be convicted by oath, or self-confession; and the other moiety, with the penalties, on weighing, trying, or seizure of bread, by a magistrate, to such purposes as the magistrate shall think fit.

**Stat.** 3 Geo. 3. c. 11. [A. D. 1763. intituled] "An act for explaining and amending an act made in the thirty-first year of the reign of his late majesty king George the second, intituled, An act for the due making of bread; and to regulate the price and assize thereof: and to punish persons who shall adulterate meal, flour or bread."

Whereas the statute made in the thirty-first year of the reign of his late majesty king George the second, intituled, "An act for the due making of bread, and to regulate the price and assize thereof; and to punish persons who shall adulterate meal, flour or bread"; is deficient in several of the provisions thereby made when an assize of bread is not set pursuant to the directions of the said act: For remedy wherein, and in order that makers of bread for sale, and the sellers thereof, may in all places, although the assize of bread shall at any time not be set, be under due regulations; Be it

After 1 May  
1763, no af-  
fized and pri-  
zed bread to be  
made at the  
same time in  
the same place,

upon penalty  
of forfeiting  
not exceeding  
40s. nor less  
than 10s.

Justices, at any  
general, quar-  
ter, or petty  
session, may  
appoint which  
of the sorts of  
affize or prized  
loaves,

and what other  
sorts of bread,  
and of what  
grain, shall  
be made for  
sale, they caus-  
ing an entry to  
be made of  
such orders;  
which is to be  
free for inspec-  
tion;

enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled and by the authority of the same, That from and after the first day of *May* one thousand seven hundred and sixty-three, although no affize of bread shall be set in pursuance of the said act, no loaf or loaves of bread, called or deemed affize loaf or loaves in the tables of the affize and price of bread in the said act enacted and referred to, and the weight of which varies according to the variation in the price of grain, shall be made for sale, sold or carried out for sale, or be offered or exposed to or for sale, or be allowed to be sold in any place, where any loaf or loaves of the bread called or deemed prized loaf or loaves in the said tables of the affize and price of bread, in and by the said act enacted and referred to, and the price of which varies according to the variation in the price of grain, shall at the same time be made for sale, or be allowed to be sold; that is to say, no affize loaves of the price of three pence, and prized loaves called half quartern loaves, nor affize loaves of the price of six pence, and prized loaves called quartern loaves, nor affize loaves of the price of twelve pence, and prized loaves called half peck loaves, nor affize loaves of the price of eighteen pence, and prized loaves called peck loaves, shall at the same time, in any place be made for sale, sold, or carried out for sale, or be offered or exposed to or for sale, or allowed to be sold; that unwary persons may not in any wise be imposed on, and prejudiced by buying affize loaves referred to in the said tables, as or for prized loaves referred to in the said tables; or by buying such prized loaves as or for such affize loaves; and every person who shall offend in the premises, and be convicted of any such offence in manner hereafter specified, shall, for every such offence, forfeit and pay a sum not exceeding forty shillings, nor less than ten shillings, as the justice or justices, before whom any such offender or offenders shall be convicted, shall, from time to time, adjudge."

*Sec. 2.* "And be it further enacted by the authority aforesaid, That from and after the said first day of *May* one thousand seven hundred and sixty-three, although no affize of bread shall be set pursuant to the directions of the said act, the justices of the peace of every county, riding, division, city, town, liberty and place, shall and may, at any general or quarter session of the peace which shall be held within their respective counties, divisions, cities, towns, liberties or jurisdictions, or at any petty session which shall be held by any such justices within their respective jurisdictions, from time to time, ascertain and appoint (as often as they shall think proper) for all or any part of their respective jurisdictions, which of the sorts of affize or prized loaves shall be allowed from time to time to be made and sold within their respective jurisdictions; and also what other sorts of bread, and of what sort and sorts of grain, shall be allowed to be made and sold within their respective jurisdictions, or within any part thereof; and every order which shall be so from time to time made in or touching the premises by any such justices, shall be entered in a book to be provided and kept for that purpose by such justices, and which book shall and may be in-  
spected

spected by the makers of bread for sale, within the respective jurisdiction of any such justices, at all seasonable times in the day time, and without paying any fee or reward in respect thereof; and after the making every such order by any such justices, the justices who shall make the same shall, with all convenient speed, cause a copy of every such order to be affixed or put up in some market or other public town within the division or part of the county, riding, liberty, rape, wapentake, city, town, or place, in which such order is to be observed and take place: or else every such justices, within their respective jurisdictions, shall cause a copy of every such order to be, with all convenient speed after the making thereof respectively, inserted in some public news paper which shall be published in the county, riding, division, liberty, rape, wapentake, city, town or place, or some part thereof, in which every such order respectively is to be observed and take place.”

and a copy thereof to be set up in some market, or other public place, or

published in the county news papers

*Secl. 3.* “Provided always, and be it enacted by the authority aforesaid, That no justices, within their respective jurisdiction, shall at any time allow the making for sale, or selling, any sorts of assize bread made of the flour or meal of wheat, other than and besides wheaten and household bread, and loaves of white bread of the price of two pence or under.”

The only sorts of assize bread made of wheat which shall be allowed.

*Secl. 4.* “And be it further enacted by the authority aforesaid, That from and after the said first day of May one thousand seven hundred and sixty-three, although the assize of bread shall not be set pursuant to the said act, every maker of bread for sale shall observe and keep the same or like proportion between white and wheaten bread, and wheaten and household assize bread, as to weight, as is mentioned or intended, enacted and referred to in the said assize tables; that is to say every white loaf of the price of two pence, or under, shall always weigh three parts in four of the weight of the wheaten loaf of the like price, as near as may be; and every wheaten assize loaf of bread, of whatsoever price the same shall be, shall always weigh three parts in four of the weight of every household assize loaf of bread of the like price as near as may be; and that every household assize loaf of bread, of whatever price the same shall be, shall always weigh one third part more than every wheaten assize loaf of the like price as near as may be; and every person who shall make for sale, sell, offer or expose to or for sale, or have in his or her custody for sale, any loaf of white, wheaten, or household bread, in which the said proportions or regulations shall not be observed and kept, as near as may be, shall on being convicted of any such offence in manner herein after-mentioned, forfeit and pay, for every such offence, a sum not exceeding forty shillings, as the justice or justices before whom any such offender or offenders shall be convicted, shall, from time to time, adjudge.”

A like proportion, as to weight, is to be kept between the white and wheaten bread and the wheaten and household assize bread; viz.

on penalty of forfeiting, not exceeding 40 s.

*Secl. 5.* “And be it further enacted by the authority aforesaid, That from and after the said first day of May one thousand seven hundred and sixty-three, although the assize of bread shall not be set pursuant to the said act, every peck, half peck, quarter of a peck, and half quarter of a peck loaf, made for sale, of the meal or flour of wheat, and called *wheaten bread*, shall always be sold in proportion to each other respectively, as to

A proportion in the price is to be kept in the peck loaf, and half peck, and its other subdivisions, price; both in the

wheaten and  
in household  
bread;  
and the house-  
hold is to be  
one fourth  
cheaper than  
the wheaten;

on penalty of  
forfeiting, not  
exceeding  
40 s. nor less  
than 10 s.

The weight  
the peck loaf,  
and its subdivi-  
sions, are to  
weigh, in  
every sort of  
bread which  
shall be made  
for sale, viz.

on forfeiture  
not exceeding  
5 s. nor less  
than 1 s. for  
every ounce  
wanting in the  
weight;  
nor exceeding  
2 s. 6 d. nor  
less than 6 d.  
for all under  
1 oz.

the same to be  
weighed be-  
fore a justice,  
within 24  
hours after  
being baked,  
sold, or ex-  
posed to sale,  
&c. if within  
any city,  
town corpo-  
rate, &c.  
or within the  
bills of mor-  
tality;  
and in other  
places, within  
3 days;

price; and that every peck, half peck, quarter of a peck, and half quarter of a peck loaf, made for sale, of the meal or flour of wheat, and called *household bread*, shall always be sold in proportion to each other, and for one fourth less in price than the loaf made for sale with the meal or flour of wheat, called *wheaten bread*, of the same denomination; and every person who shall in any wise offend in the premises, shall, for every loaf of either the said wheaten or household bread which shall be sold by him or her, or offered or exposed to or for sale, or found in his or her custody for sale, contrary to the true intent and meaning of this act, forfeit and pay a sum not exceeding forty shillings, nor less than ten shillings, as the justice or justices before whom any such offender or offenders shall be convicted, shall, from time to time, adjudge.

*Sec. 6.* "And be it further enacted by the authority aforesaid, That from and after the said first day of *May* one thousand seven hundred and sixty-three, although the assize of bread shall not be set pursuant to the said recited act, the several loaves herein after-mentioned of every sort of bread which shall be made for sale, shall always weigh in averdupois weight as follows; that is to say, every peck loaf, seventeen pounds six ounces; every half peck loaf, eight pounds eleven ounces; every quarter of a peck loaf, four pounds five ounces, and one half ounce; and every half quarter of a peck loaf, two pounds two ounces and three quarters of one ounce: and every person who shall make for sale, or offer or expose to or for sale, or have in his or her possession for sale, any peck, half peck, quarter of a peck, or half quarter of a peck loaf, in any wise deficient of the due weight the same ought to be as aforesaid, shall, on being convicted of any such offence in manner herein after mentioned, forfeit and pay a sum not exceeding five shillings, nor less than one shilling, for every ounce of every loaf of such bread, which shall at any time be found wanting or deficient of or in the due weight the same ought to be as aforesaid; and for every such loaf of bread which shall be found wanting less than one ounce of the due weight the same ought to be as aforesaid, a sum not exceeding two shillings and six pence, nor less than six pence, as any justice or justices before whom any such loaf of bread, which shall not be of the due weight the same ought to be as aforesaid, shall adjudge; so as all such bread which shall be complained of, as wanting at any time of the due weight the same ought to be in any city, town corporate, borough, liberty, or franchise, or the jurisdiction thereof, or within the weekly bills of mortality, shall, from time to time, be brought before some justice or justices, having jurisdiction in the premises, and shall be weighed before such justice or justices within twenty-four hours after the same shall have been baked, sold or exposed to or for sale, or found in any person's custody for sale; and so as all such bread which shall be complained of as wanting at any time in the due weight the same ought to be as aforesaid, in any hundred, riding, division, rape, wapentake, or other place out of any city, town corporate, borough, liberty, or franchise, or the jurisdiction thereof, or out of the weekly bills of mortality, shall from time to time, be brought before some justice or justices of such hundred, riding, division,

division, liberty, rape or wapentake, or other place, and shall be weighed before such justice or justices within three days after the same shall have been baked, offered or exposed to or for sale, or found in any person's custody for sale; unless it shall be made out to the satisfaction of any such justice or justices before whom any such bread shall be brought, by or on the behalf of the party or parties against whom any such complaint or information shall be made, that such deficiency in weight wholly arose from some unavoidable accident in baking or otherwise, or was occasioned by or through some contrivance or confederacy.

unless such deficiency shall be satisfactorily accounted for.

*SECT. 7.* " And be it further enacted by the authority aforesaid, That after the said first day of *May* one thousand seven hundred and sixty-three, although an assize of bread shall not be set pursuant to the said act, no person shall sell, or offer or expose to or for sale, or have in his or her custody any bread of an inferior quality to wheaten bread, with intent to sell the same at an higher price than household bread shall at the same time sell for in the place where any bread of such inferior quality shall be sold, or offered to or for sale, or be found for sale in any person's custody; upon pain that every one who shall offend in the premises shall, for every such offence, on being thereof convicted in manner herein after mentioned, forfeit and pay not exceeding the sum of twenty shillings, as the justice or justices, before whom any such offender or offenders shall be convicted, shall from time to time adjudge.

Bread of an inferior quality to wheaten, not to be sold at a higher price than the household;

on forfeiture, not exceeding 20s.

*SECT. 8.* " And be it further enacted by the authority aforesaid, That from and after the said first day of *May* one thousand seven hundred and sixty-three, although the assize of bread shall not be set pursuant to the said act, all persons who shall make for sale, sell, offer or expose to or for sale, or have in his or her custody for sale, any of the said wheaten or household bread, shall, from time to time, cause to be imprinted on every respective loaf thereof, as followeth; that is to say, on every loaf of the said wheaten bread, a large *Roman* (W), and on every loaf of the said household bread, a large *Roman* (H): And if any person, after the said first day of *May* one thousand seven hundred and sixty-three, shall make for sale, sell, offer or expose to or for sale, or have in his or her custody for sale, any loaf of the said wheaten or household bread, which shall not be marked as hereby is directed, so as the same may, on the view thereof, be ascertained under what denomination or sort of bread every such loaf was and ought to be weighed (except as to such loaves which shall be rasped after the bespeaking or purchasing thereof, by the particular desire of the person who shall order the same to be so rasped for his or her own use) he or she, who shall so offend in the premises, and shall be thereof convicted in manner herein after mentioned, shall, for every loaf of such bread not marked as hereby is directed, which shall be found in his or her custody, forfeit and pay a sum not exceeding forty shillings, nor less than ten shillings, as the justice or justices, before whom any such offender or offenders shall be convicted, shall from time to time adjudge; unless it shall be made out to the satisfaction of such justice or justices, by or on the behalf of the party or parties against whom any such complaint or information

A large *Roman* (W) to be imprinted on all wheaten bread made for sale;

and a large *Roman* (H) on all household bread;

on penalty of forfeiting not exceeding 40s. nor less than 10s. unless such omission shall be satisfactorily accounted for.



formation shall he made, that the not marking or not duly marking thereof wholly arose from some unavoidable accident in baking, or otherwise, or was occasioned by or through some contrivance or confederacy.

Bread made of any other grain than wheat, to be impressed with such letter as the justices shall order;

they causing an entry to be made of such order; which is to be free for inspection;

and a copy thereof to be set up in some market or other public place,

or published in the country news papers.

Where the justices neglect to make such order, the maker is to mark every such loaf with 2 distinct capital letters;

*Stat. 9.* " And be it further enacted by the authority aforesaid, That from and after the said first day of *May* one thousand seven hundred and sixty-three, although the assize of bread shall not be set pursuant to the directions of the said act, every loaf of every sort of bread made of the meal or flour of any other sort of grain than wheat, which shall be made for sale, or be sold, carried out, offered or exposed, in any wise, to or for sale, shall be marked with some significant and distinct letter or letters, not more than two thereon respectively, as the justices of any county, riding, division, liberty, city, town or place, at any general or quarter-session of the peace which shall be holden within their respective counties, ridings, divisions, liberties, cities, towns or places within their respective jurisdictions, or at any petty session which shall be held by any such justices within their respective jurisdictions, shall from time to time, for their respective counties, ridings, divisions, liberties, rapes, wapentakes, cities, towns, or places, or any part thereof, order or direct; and every such order shall, with all convenient speed after the making thereof, be entered in some book to be for that purpose provided and kept by such justices, and whereunto any maker of bread for sale residing within any such county, division, liberty, rape, wapentake, city, town or place, shall be at liberty to resort at seasonable times in the day-time, and to peruse every such order without being subject or liable to pay any fee or reward in respect thereof; and such justices as aforesaid shall, with all convenient speed after the making any such order as aforesaid, cause a copy thereof to be affixed or put up in some market or other public town within the division or part of the county, riding, liberty or place, in which such order as aforesaid is to be observed or take place, or in some publick place in every city, town or place, where such order is to be observed or take place; or otherwise such justices, within their respective jurisdictions, shall cause a copy of every such their respective order, with all convenient speed after the making thereof, to be inserted in some public news paper which shall be usually published in the county, riding, division, liberty, rape, wapentake, city, town or place, or some part thereof, in which such order as aforesaid is to be observed or take place; and if the justices as aforesaid shall at any time, in any place, neglect or omit to make any order, from time to time, with what letter or letters such bread which shall be made for sale, of the meal or flour of any other sort of grain than wheat, shall be marked, then the maker of all such bread for sale shall, in every place where no such order shall be made or be in force, cause every loaf of such bread he or she shall make, or cause to be made for sale, or shall sell, or offer or expose to or for sale, to be respectively marked with any two distinct capital letters as he or she shall think fit; and every person who, after the first day of *May* one thousand seven hundred and sixty-three, shall make for sale, sell, offer or expose to or for sale, or have in his or her custody, for sale, any loaf of any such sort of bread which shall be made with the meal or flour of any other sort of grain than wheat,

wheat, which shall not be marked as herein before is directed, so as that the same may, on view thereof, be ascertained under what denomination every such loaf was made (except such loaves thereof which shall be rasped after the bespeaking or purchasing thereof, by the particular desire of the person who shall order the same to be rasped for his or her own use) shall, for every time he, she or they shall so offend in the premises, and be thereof convicted in manner herein after directed, forfeit and pay a sum not exceeding forty shillings, nor less than five shillings, for every loaf of such bread which shall not be so marked as herein before is first directed, as the justice or justices before whom any such offender shall be convicted shall, from time to time, adjudge.

on penalty of  
forfeiting not  
exceeding  
4s. nor less  
than 5s. for  
every such un-  
marked loaf.

*SECT. 10.* " And to the end the good design of this statute may be more effectually accomplished; be it further enacted by the authority aforesaid, That from and after the said first day of May one thousand seven hundred and sixty-three, it shall and may be lawful for any justice or justices within the limits of their respective jurisdictions, although the assize of bread shall not be there set according to the said herein before in part recited act; and also for any peace officer or officers authorized by warrant under the hand and seal, or hands and seals, of any such justice or justices (and which warrant any such justice or justices is and are hereby empowered to grant within their respective jurisdictions), to enter into any house, shop, stall, bakehouse, warehouse, or outhouse, or other place, of or belonging to any baker or seller of bread, and to search, view, weigh, examine and try all or any bread which shall be there found; and also to view, weigh and try all bread made for sale, which at any time shall be offered or exposed to or for sale, or found in any one's custody for sale, in any wise howsoever, within the respective jurisdiction of any such justice or justices: and if any loaf or loaves of bread of any denomination, shall, on any search, view, weighing, trial or examination thereof, by any justice or justices, or on any complaint made to, or information given before, any justice or justices, and proved by the oath of one or more credible witness or witnesses, be found to be deficient in the due weight the same ought to be, or not to be marked according to the directions and intent of this act, or to be deficient in the due baking or working thereof, or to be wanting in the goodness of the stuff whereof or wherewith any such loaf shall have been made, or to have been made with any mixture of meal or flour of any other sort of grain than of the grain the same shall import to be made with, or to be made with any larger or other proportion of any other or different sort or sorts of grain, or the meal or flour thereof, than what ought to be put therein, or to be made with any mixture or ingredient which by the said in part recited act ought not to be put therein; or to be made with any thing as for or in lieu of flour which shall not really be the genuine flour the same shall import to be and ought to be, or that any such bread shall be made with any leaven not allowed by the said in part recited act to be used in making bread; then, and in every or any of the said cases, every such justice or justices, peace officer and officers as aforesaid, is and are hereby respectively, within the limits of their several jurisdictions, im-

and peace of-  
ficers (autho-  
rized by war-  
rant of a ju-  
stice)

may enter the  
houses of ba-  
kers, and  
search for,  
examine, and  
weigh all  
bread made  
for, or expo-  
sed to sale, &c.

and bread  
found defect-  
ive in the  
weight, or  
not duly  
marked, or  
wanting in  
due baking,  
or goodness,  
or being frau-  
dulently mixt,  
&c.

may be seized, powered and required by the authority of this act, to seize every loaf of such bread, and to dispose thereof to poor persons, as such justice or justices in his or their discretion shall, from time to time, within their respective jurisdictions, think fit; unless it shall be made out to the satisfaction of any such justice or justices, by or on the behalf of the party or parties against whom any such complaint or information as aforesaid shall be made, that the default found or complained of wholly arose from some unavoidable accident, or was occasioned by or through some contrivance or confederacy; and every maker and seller of bread respectively as aforesaid, whose bread shall at any time be found before any justice or justices wanting in the goodness of the stuff, whereof or wherewith the same should have been made, or to be made with any mixture of meal or flour of any other sort of grain than of the grain the same shall import to be made with, or to be made with any larger or other proportion of any other or different sort or sorts of grain, or the meal or flour thereof, than what ought to be put therein, or to be made with any mixture or ingredient not allowed by the said in part recited act to be put therein, or to be made with any thing as for or in lieu of flour, which shall not really be the genuine flour the same shall import to be and ought to be, or to be made with any leaven not allowed by the said in part recited act to be used in making such bread, shall, for every such offence, on being convicted thereof in manner herein after mentioned, also forfeit and pay a sum not exceeding five pounds, nor less than twenty shillings, as the justice or justices, before whom any such offender or offenders shall be convicted, shall from time to time adjudge, unless the default found or complained of shall be made out to the satisfaction of any such justice or justices, by or on the behalf of the party or parties against whom such complaint or information as aforesaid shall be made, to have wholly arose from some unavoidable accident, or to have been occasioned by or through some contrivance or confederacy.

and the maker and seller shall also forfeit not exceeding 5l. nor less than 20s. for every such offence; unless the default shall be satisfactorily accounted for.

Penalty of opposing any legal search, view, weighing, trying or seizing of bread, is not to exceed 40s. nor be less than 20s.

No miller, mealman or baker, may act as a justice in the execution of this act, on penalty of 50l.

*Sec. 11.* " And be it further enacted by the authority aforesaid, That from and after the said first day of *May* one thousand seven hundred and sixty-three, although the assize of bread shall not be set according to the said in part recited act, if any person or persons shall wilfully obstruct, hinder, resist, or in any wise oppose any search, view, weighing, trying or seizing of any loaf or loaves of bread, authorized by this act to be made or tried, he, she or they, who shall so offend in the premises, shall, for every such offence, on being convicted thereof in manner herein after mentioned, forfeit and pay such sum of money not exceeding forty shillings, nor less than twenty shillings, as the justice or justices before whom any such offender or offenders shall be convicted shall, from time to time, adjudge.

*Sec. 12.* " Provided always, and be it further enacted by the authority aforesaid, That no person who shall follow, or be concerned in the business of a miller, mealman or baker, shall be capable of acting, or shall be allowed to act as a justice of the peace under this act, or in putting in execution any of the powers in or by this act granted; and if any miller,

mill, mealman or baker shall presume so to do, he or they so offending in the premises shall, for every such offence, forfeit and pay the sum of fifty pounds to any person or persons who will inform or sue for the same; to be recovered in any of his majesty's courts of record at *Westminster*, by action of debt, bill, plaint or information, wherein no essoin, wager of law, or more than one imparlance shall be allowed, or by way of summary complaint, before the court of session in that part of *Great Britain* called *Scotland*.

*Stat. 13.* " Provided always, and be it also enacted by the authority aforesaid, That if any person, who shall carry on or follow the trade of a baker, shall, at any time after the said first day of *May* one thousand seven hundred and sixty-three, make complaint to any justice or justices of the peace within his or their jurisdiction, and make appear to him or them by the oath of any credible witness, that any offence which any such person who shall so carry on, or follow the said trade of a baker, shall have been charged with, and shall have incurred and paid any penalty under this act, shall have been occasioned by or through the wilful neglect or default of any journeyman or other servant employed by or under any such person, who shall so follow or carry on the said trade of a baker; then, and in any such case, every such justice and justices may, and is and are hereby required to issue out his or their warrant under his or their respective hand and seal, or hands and seals, for bringing any such journeyman or servant before any such justice or justices, or any justice of the county, city, riding, division or place, where the offender can be found; and on any such journeyman or servant being thereupon apprehended, and brought before any such justice or justices, he or they, within their respective jurisdictions, is and are hereby authorized and required to examine into the matter of such complaint; and on proof thereof being made upon oath to the satisfaction of any such justice or justices who shall hear such said complaint, such justice and justices is and are hereby directed and authorized by any order under his or their respective hand or hands, to adjudge and order what reasonable sum of money shall be paid by every such journeyman or servant to his master or mistress, as or by way of recompence to him or her for the money he or she shall have paid, by reason of the wilful neglect or default of any such journeyman or servant; and if any such journeyman or servant shall neglect or refuse on his conviction, to make immediate payment of the sum of money which any such justice or justices shall order to be paid, by reason of such said wilful neglect or default, then any such justice and justices within their respective jurisdictions is and are hereby authorized and required by warrant under his hand and seal, or their hands and seals, to cause every such journeyman or servant to be apprehended and committed to the house of correction, or some other prison of the county, riding, division, city, town, liberty or place, in which any such journeyman or servant shall be apprehended, and there to be kept to hard labour, for any time not exceeding one calendar month from the time of such commitment, as such justice or justices shall order, unless payment shall be made of the money ordered

Baker making it appear, that any offence for which he shall have paid the penalty, was occasioned by the neglect or default of his servant;

Justice to issue his warrant out for bringing the offender before him;

and on conviction,

order a sum to be paid by way of satisfaction;

and on non-payment thereof,

is to commit such servant to hard labour, for any time not exceeding one month;

unless payment be soon made.

to be paid after such commitment, and before the expiration of the said calendar month.

*Seet. 14.* " And for the better and more easy recovery of the several penalties and forfeitures to be incurred by disobedience to this act and the powers herein contained, be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the justices of the peace, or any one of them, within their respective counties, ridings, divisions, cities, towns corporate, boroughs, liberties or jurisdictions, to hear and determine, in a summary way, all offences committed against the true intent and meaning of this act; and, for that purpose, to summon before them, or any of them, within their respective jurisdictions, any party or parties accused of being an offender or offenders against the true intent and meaning of this act; and in case the party accused shall not appear on such summons, or offer some reasonable excuse for his default, then upon oath of any credible witness of any offence committed contrary to the true intent and meaning of this act, any such justice or justices shall issue his or their warrant or warrants for apprehending the offender or offenders within the jurisdiction of any such justice or justices; and upon the appearance of the party or parties accused, or in case he, she or they shall not appear, on notice being given to, or left for, him, her or them, at his, her or their usual place of abode, or if he, she or they cannot be apprehended, on a warrant granted against him, her or them, as herein before is directed; then, and in any such case, any such justice or justices is and are hereby authorized and required to proceed to make enquiry touching the matters complained of, and to examine any witness or witnesses who shall be offered on either side, on oath as aforesaid, and which oath every such justice and justices is and are hereby authorized, empowered, and required to administer; and after hearing of the parties who shall appear, and the witnesses who shall be offered on either side, such justice or justices shall convict or acquit the party or parties accused: and if the penalty or money forfeited on any such conviction shall not be paid within the space of twenty-four hours after any such conviction, every such justice or justices shall thereupon issue a warrant or warrants under his hand and seal, or their hands and seals respectively, directed to any peace officer or officers within their respective jurisdictions, and thereby require him or them to make distress of the goods or chattels of the offender or offenders within such their respective jurisdictions, to satisfy such penalty or money forfeited, and the costs of the prosecution and distress: and if any offender shall convey away his or her goods out of the jurisdiction of any such justice or justices before whom he or she was convicted, or so much thereof that the penalty or money forfeited cannot be levied, then some justice within whose jurisdiction the offender shall have removed his or her goods, shall back the warrant granted by any justice or justices as aforesaid, and thereupon the penalty forfeited shall be levied on the offender's goods and chattels, by distress and sale thereof; and if within five days from the distress being taken, the penalty or money forfeited and costs as aforesaid, shall not be paid, the goods seized or taken shall be appraised and

Justices to hear and determine all offences against this act in a summary way.

and the penalties to be paid within 24 hours after conviction; or to be levied by distress and sale.

Warrant of distress may be backed.

Distress to be sold within 5 days;

and fold, tendering the overplus (if any) after deducting the penalty or forfeiture, and the costs and charges of the prosecution, distress and sale, to the owner or owners thereof; which charges shall be ascertained by the justice or justices before whom any such offender or offenders shall have been so convicted, or by the justice who backed the warrant (if either of them shall continue alive), and if not, by some other justice of the county, riding, division, city or place, in which the offender shall have been convicted, on application for that purpose to be made to any such justice; and for want of such distress, then every such justice, within whose respective jurisdiction any such offender or offenders shall reside or be, shall, on the application of any prosecutor or prosecutors, and proof on oath made of the conviction and nonpayment of the penalty and charges, by warrant under his hand and seal, commit every such offender or offenders to the common gaol or house of correction of the county, riding, division, city, liberty or place, where such offender or offenders shall be found; there to remain for the space of one calendar month from the time of such commitment, unless after such commitment payment shall be made of the penalty or money forfeited, and the costs and charges ascertained as aforesaid, before the expiration of the said one calendar month.

and all charges to be deducted thereout.

For want of sufficient distress, the offender to be committed.

*Seff. 15.* " And be it further enacted by the authority aforesaid, That the justice or justices, before whom any person shall be convicted in that part of *Great Britain* called *England*, in manner prescribed by this act, shall cause every such respective conviction to be drawn up in the form or to the effect following; that is to say,

Form following to be observed in convictions in *England*.

(To wit) **B**E it remembered, That on this day of in the year of the reign of A. B. is convicted before majesty's justices of the peace for the said county of or for the or for the city, liberty, or town of (as the case shall happen to be) for and do adjudge (him, her, or them, as the case shall be) to pay and forfeit for the same, the sum of Given under the day and year aforesaid.

*Seff. 16.* " And be it further enacted by the authority aforesaid, That in case any person or persons shall be convicted of any offence against this act, before any justice or justices of the peace in that part of *Great Britain* called *Scotland*, every such conviction shall proceed and be drawn up in the form commonly used and practised before such justices of the peace, on convictions for other offences of the like nature.

Form in Scotland to be as for other offences of the like nature.

*Seff. 17.* " And be it further enacted by the authority aforesaid, That no *certiorari*, letters of advocation, or of suspension, shall be granted to remove any conviction, or other proceedings had thereon in pursuance of this act.

No conviction, &c. removable by *certiorari*.

*Seff. 18.* " Provided always, and be it further enacted by the authority aforesaid, That if any person convicted of any offence punishable by this judgment of a justice, and

appeal to the quarter-sessions ; this act, shall think him, her or themselves aggrieved by the judgment of any justice or justices before whom he, she or they shall have been convicted, such person shall have liberty, from time to time, to appeal to the justices at the next general or general quarter-sessions of the peace which shall be held for the county, riding, division, city, liberty, town or place, where such judgment shall have been given ; and that the execution of the said judgment shall, in such case, be suspended ; the person so convicted entering into a recognizance at the time of such conviction, with two sufficient sureties, in double the sum which such person shall have been adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming, to abide the judgment and determination of the justices at their said next general or general quarter-session ; which recognizance the justice or justices, before whom such conviction shall be had, is and are hereby impowered and required to take ; and the justices in the said general or general quarter-session are hereby authorized and required to hear and finally determine the matter of every such appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party ; and if, upon hearing the said appeal, the judgment of the justice or justices, before whom the appellant or appellants shall have been convicted, shall be affirmed, such appellant or appellants shall immediately pay down the sum he, she or they shall have been adjudged to forfeit, together with such costs as the justices in their said general or general quarter-session shall award to be paid to the prosecutor or informer for defraying the expences sustained by reason of any such appeal ; and in default of the appellant's paying the same, any justice or justices having jurisdiction in the place into which any such appellant or appellants shall escape, or where he, she or they shall reside, shall and may, by warrant under their hands and seals, or his hand and seal, commit every such appellant and appellants to the common gaol of the county, riding, division, liberty, city, town or place, where he, she or they shall be apprehended, there to remain, until he, she or they shall pay the penalty or money forfeited and costs as aforesaid, or shall compound in respect thereof with the informer, and pay the composition-money agreed on to the informer ; but if the appellant or appellants in any such appeal shall make good his, her or their appeal, and be discharged of the said conviction, reasonable costs shall be awarded to the appellant or appellants, against such informer or informers, who (in case of such conviction having been affirmed) would have been intitled to the penalty to have been recovered as aforesaid ; and which costs shall and may be recovered by the appellant or appellants against any such informer or informers, in like manner as costs given at any general or general quarter-session of the peace are recoverable.

Where there is not sufficient time between the conviction and

*Sec. 19.* " Provided always, and be it further enacted by the authority aforesaid, That if any such conviction shall happen to be made within six days before any general or general quarter-session of the peace, which shall be held for the county, riding, division, city, town corporate, borough or place, where such conviction shall have been made ; then the

party

party or parties who shall think him, her or themselves aggrieved by any such conviction, shall and may, on entering into a recognizance in manner and for the purposes before directed, be at liberty to appeal, either to the then next, or the next following general or general quarter-session of the peace which shall be held for any such county, riding, division, city, town corporate, borough, liberty or place, where any such conviction shall have been made.

Sett. 20. " And be it further enacted by the authority aforesaid, That every action or suit which shall be brought or commenced against any justice or justices, or any peace officer or officers in that part of Great Britain called England, for any matter or thing done or committed by virtue of or under this act, shall be commenced within six calendar months next after the fact committed, and not afterwards, and shall be laid or brought in the county, city or place, where the matter in dispute shall arise, and not elsewhere; and that the statute made in the twenty-fourth year of king George the second, intituled, *An act for rendering the justices of the peace more safe in the execution of their office; and for indemnifying constables, and others, acting in obedience to their warrants; so far as the said act relates to the rendering the justices more safe in the execution of their office, shall extend, and be construed to extend, to the justice or justices of the peace acting under the authority or in pursuance of this act; and that no action or suit shall be had or commenced against, nor shall any writ be sued out, or copy of any writ be served upon any peace officer or officers, for any thing done in the execution of this act, until seven days after a notice in writing shall have been given to, or left for him or them, at his or their usual place of abode, by the attorney for the party intending to commence such action; which notice shall contain the name and place of abode of the person intending to bring such action, and also of his attorney, and likewise the cause of action or complaint; and any peace officer or officers shall be at liberty, and may by virtue of this act, at any time within seven days after any such notice shall have been given to or left for him, tender, or cause to be tendered any sum or sums of money, as amends for the injury complained of, to the party complaining, or to the attorney named in any such notice; and, if the same is not accepted of, the defendant or defendants in any such action or actions may plead such tender in bar of such action or actions, together with the general issue, or any other plea, with leave of the court in which the action shall be commenced: and if, upon issue joined on such tender, the jury shall find the amends tendered to have been sufficient, they shall find a verdict for the defendant or defendants: and in every such case, or if the plaintiff shall become nonsuit, or discontinue his action; or if judgment shall be given for the defendant or defendants upon demurrer; or if any action or suit shall be brought after the time limited by this act for bringing the same, or shall be brought in any other county or place than as aforesaid; then, and in every such case, the jury shall find a verdict for the defendant or defendants; and the defendant or defendants shall be intitled to his or their costs: but if the jury shall find that no such tender was made, or that the amends tendered were*

sessions, appeal may be made to the 2d quarter-session.

Limitation of actions brought against justices and peace officers.

Act 24 G. II. extended to justices acting under this act.

Notice to be given to peace officers, before any writ be sued out against them;

and if tender of amends be made by them,

and the same shall be found to have been sufficient, &c. a verdict to be found for them, with costs.

Plaintiff recovering, intitled to damages and costs.



not sufficient, or shall find a verdict against the defendant or defendants, on any plea or pleas by him or them pleaded; then they shall give a verdict for the plaintiff, and such damages, as they shall think proper; and the plaintiff shall thereupon recover his or her costs, against every such defendant and defendants.

**Limitation of other actions.** *Seet. 21.* “ And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced against any other person or persons than a justice or justices, or peace officer, for any thing done in pursuance of this act, the defendant or defendants in any such action or suit may plead the general issue, and give this act, and the special matter, in evidence at any trial to be had thereupon; and that the same was done in pursuance and by the authority of this act; and if it shall appear so to have been done, or if a verdict shall be found for the defendant or defendants; or if the plaintiff shall be nonsuited, or discontinue his action, after the defendant or defendants shall have appeared; or if judgment shall be given upon a verdict or demurrer against the plaintiff or plaintiffs, the defendant or defendants in every such action shall and may recover double costs, and have the like remedy for the same, as any defendant or defendants hath or have in other cases by law for recovery of his or their costs.

**Limitations and remedies for rendering justices, peace officers, and other persons, safe in their duty, extended to Scotland.** *Seet. 22.* “ And be it enacted by the authority aforesaid, That the above limitations and remedies for rendering justices of peace, peace officers, and all other persons, safe in the execution of their several offices under this act, shall extend to and be available to all such justices of peace, peace officers, and other persons in that part of *Great Britain* called *Scotland*; and shall be pleaded by them, and sustained by the court or courts before which they, or any of them may happen to be sued, according to the forms of the law of *Scotland*.

**Limitation of prosecutions for offences against this act.** *Seet. 23.* “ Provided also, and be it likewise enacted by the authority aforesaid, That no person shall be convicted of any offence under this act, unless the prosecution in order for such conviction shall be commenced within three days after the offence committed; and that no person, who shall be prosecuted to conviction for any offence done or committed against this act, shall be subject or liable to be prosecuted for the same offence under any other law.

**Penalties and forfeitures how to be recovered and applied.** *Seet. 24.* “ And be it further enacted by the authority aforesaid, That all penalties and forfeitures by this act inflicted shall, when recovered or paid, go and be distributed in manner following; that is to say, one moiety thereof, where any offender or offenders shall be convicted, either by his, her or their own confession, or by the oath of one or more credible witness or witnesses, shall go and be paid to the person or persons who shall inform against and prosecute to conviction any such offender or offenders; and the other moiety thereof as the justice or justices, before whom any offender or offenders against this act shall be convicted, shall from time to time think fit and order, for the better carrying into execution the purposes of this act, and defraying the charges attending the carrying the same into execution.

*Stat. 25.* "Provided likewise, and it is hereby enacted, That this act, Rights of the  
 or any thing herein contained, shall not extend, or be construed to extend, <sup>two universi-</sup>  
 to prejudice the ancient right or custom of the two universities of *Oxford* <sup>ties reserved.</sup>  
 or *Cambridge*, or either of them, or of their or either of their clerks of the  
 market, or the practice within the several jurisdictions of the said universi-  
 ties, or either of them, used, to ascertain and appoint the weight of all  
 sorts of bread to be sold or exposed to sale within their several jurisdic-  
 tions; but that they, and every of them, shall and may, severally and re-  
 spectively, from time to time, as there shall be occasion, ascertain and  
 appoint within their several and respective jurisdictions, the weight of all  
 sorts of bread to be sold or exposed to sale by any baker or other person  
 whatsoever, within the limits of their several jurisdictions; and shall and  
 may punish the breach thereof as fully and freely, in all respects, as they  
 used to do, and as if this act had never been made; any thing herein con-  
 tained to the contrary thereof in any wise notwithstanding."

## Brewers.

**STATUTE 2 & 3 Ed. 6. c. 15.** [*A. D. 1548. intituled*] "The  
 bill of conspiracies of Victuallers and craftsmen."

Forasmuch as of late divers sellers of victuals, not contented with  
 moderate and reasonable gain, but minding to have and to take for their  
 victuals so much as lust them, have conspired and covenanted together to  
 sell their victuals at unreasonable prices: (2) And likewise artificers, handi-  
 craftsmen and labourers, have made confederacies and promises, and have  
 sworn mutual oaths, not only that they should not meddle one with others  
 work, and perform and finish that another hath begun, but also to consti-  
 tute and appoint how much work they shall do in a day, and what hours  
 and times they shall work, contrary to the laws and statutes of this realm,  
 and to the great hurt and impoverishment of the king's majesty's subjects:  
 (3) For reformation thereof, it is ordained and enacted by the king our  
 sovereign lord, the lords and commons, in this present parliament assembled,  
 and by the authority of the same; That if any butchers, brewers, bakers,  
 poulterers, cooks, costermongers or fruiterers, shall, at any time from and  
 after the first day of *March* next coming, conspire, covenant, promise or  
 make any oaths, that they shall not sell their victuals but at certain prices;  
 (4) or if any artificers, workmen or labourers, do conspire, covenant or  
 promise together, or make any oaths, that they shall not make or do their  
 works, but at a certain price or rate, or shall not enterprise or take upon  
 them to finish that another hath begun, or shall do but a certain work in a  
 day, or shall not work but at certain hours and times; (5) That then every  
 person so conspiring, covenanting, swearing or offending, being lawfully  
 convicted c. 4.

Victuallers  
 conspiring to  
 sell their vic-  
 tuals but at  
 certain prices,  
 and labourers  
 conspiring  
 touching their  
 works, shall be  
 punished.

The punish-  
 ments of the  
 labourers con-  
 spiring the  
 time or man-  
 ner of their  
 work. 5 El.

convict thereof by witness, confession, or otherwise, shall forfeit for the first offence ten pound to the king's highness, and if he have sufficient to pay the same, and do also pay the same within six days next after his conviction; or else shall suffer for the same offence twenty days imprisonment, and shall only have bread and water for his sustenance: (6) And for the second offence shall forfeit twenty pound to the king, if he have sufficient to pay the same, and do pay the same within six days next after his conviction; or else shall suffer for the second offence punishment of the pillory. (7) And for the third offence shall forfeit forty pound to the king, if he have sufficient to pay the same, and also do pay the same within six days next after his conviction; or else shall sit on the pillory, and lose one of his ears, and also shall at all times after that be taken as a man infamous, and his saying, depositions or oath not to be credited at any time in any matters of judgment."

A conspiracy by a society or company of victuallers.

*Stat. 2.* And if it fortune any such conspiracy, covenant or promise to be had and made by any society, brotherhood or company of any craft, mystery or occupation of the victuallers above mentioned, with the presence or consent of the more part of them, that then immediately upon such act of conspiracy, covenant or promise, had or made, over and besides the particular punishment before in this act appointed for the offender, their corporation shall be dissolved to all intents, constructions and purposes."

Which magistrates may inquire of and punish offenders.

*Stat. 3.* "And it is further ordained and enacted by the authority aforesaid, That all and singular justices of assize, justices of peace, mayors, bailiffs, and stewards of leets, at all and every their sessions, leets and courts, shall have full power and authority to inquire, hear and determine all and singular offences committed against this statute, and to punish, or cause to be punished the offender, according to the tenor of this statute."

*Stat. 2 Geo. 3. c. 14. [A. D. 1761.]* Made among other purposes, "to prevent vexatious proceedings against brewers, victuallers, and others, with respect to the prices of beer and ale."

Preamble.

Whereas brewers, inn-keepers, victuallers, or other retailers of strong beer or ale, have been threatened with, and may be subject to, vexatious prosecutions for advancing, or having advanced, the price of strong beer or ale, however justly and reasonably: now, in order to prevent such vexatious proceedings, may it please your most excellent majesty, that it may be enacted; and Be it therefore further enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That no brewer, inn-keeper, victualler, or other retailer of strong beer or ale shall, at any time hereafter, be sued, impleaded, or molested, by indictment, information, popular action, or otherwise, for advancing, or having advanced, the price of strong beer or ale in a reasonable degree; any law or statute to the contrary notwithstanding."

The price of strong beer and ale may be reasonably advanced without subjecting the vender to prosecution.

*Stat.*

**Stat. 1 Will. & M. c. 24.** [*A. D. 1688. intituled*] “An act for an additional duty upon beer, ale, and other liquors.”

*Sec. 17.* “And be it further enacted by the authority aforesaid, That, <sup>100l penalty</sup> from and after the first of *September* one thousand six hundred eighty-nine, <sup>for using mel-</sup> no common brewer, or retailer of beer or ale, shall use in the brewing or <sup>laffes in brew-</sup> working of any beer or ale any mellasses, coarse sugar, honey, or composition or extract of sugar, upon the penalty of the forfeiture, for every such offence, of all such liquors wherein any mellasses, or coarse sugar, honey, or such composition or extract shall be put, and also of the sum of one hundred pounds; one moiety of all the said forfeitures to be to their majesties, the other moiety to the informer, to be recovered by action of debt, bill, plaint or information, in any of their majesties courts of record, wherein no esloign, wager of law, or any more than one imparlance shall be allowed, so as such suit be commenced within six months after such forfeiture incurred.”

**Stat. 10 & 11 Will. 3. c. 21.** [*A. D. 1699*] *made, among other purposes,* “for preventing of abuses in the brewing of beer and ale.”

*Sec. 34.* And whereas it is found by experience, That notwithstanding any law now in force, many common brewers do use great quantities of mellasses in the brewing ale and beer, whereby the consumption of malt is very much hindred, and his majesty defrauded of a great part of the duties of such ale and beer so brewed, as aforesaid: Be it therefore enacted by the authority aforesaid, That if any common brewer, or retailer of beer or ale, <sup>Penalty on</sup> shall, after the said tenth day of *May* one thousand six hundred ninety- <sup>brewer, using</sup> nine, make use of any mellasses, coarse sugar, honey, or composition or <sup>mellasses, &c.</sup> extract of sugar, in the brewing, making, or working of any ale or beer, or if any common brewer shall receive or take into his custody or possession any quantity of mellasses, coarse sugar, honey, or composition or extract of sugar, exceeding ten pounds, every such brewer and retailer shall forfeit and lose for every such offence respectively the sum of one hundred pounds; and every servant of such brewer, and every other person, who shall be <sup>penalty on</sup> aiding and assisting in the using any mellasses, coarse sugar, honey, or ex- <sup>brewers ser-</sup> tract of sugar, in the brewing or working of such ale or beer, or in carry- <sup>vants.</sup> ing or conveying the same into the house, brewhouse or other place belonging to such brewer, shall also forfeit and lose, for every such offence, the sum of twenty pounds, and in default of payment thereof shall suffer three months imprisonment.”

**Stat. 9 Ann. c. 12.** [*A. D. 1710. intituled*] “An act for laying a duty upon hops.”

*Sec. 24.* “And in regard it is found by experience, That hops used in <sup>Brewer, &c.</sup> the making of malt-drinks are more wholesome for those that drink or <sup>not to use</sup> consume the same, and greater advantage to the drink itself, than any <sup>broom, &c. on</sup> other bitter ingredient that can be used instead thereof, It is hereby further <sup>pain of 20l.</sup>

Exception.

enacted by the authority aforesaid, That during the continuance of this act, no common brewer, inn-keeper, or victualler, shall use any broom, wormwood, or any other bitter ingredient, (to serve instead of hops) in brewing or making any beer or ale to be brewed or made by him, her or them for sale in any part of *Great Britain*, under the penalty of forfeiting the sum of twenty pounds for every such offence; the infusing of broom or wormwood into beer or ale, by the retailer, after the same is brewed and tunned, to make the same broom or wormwood ale, or broom or wormwood beer, always excepted."

*Secl. 26. Penalties to be recovered as by the laws of excise.*

And by *stat. 12 Ann. stat. 1. c. 2. secl. 32.* No common brewer, or retailer of beer or ale, shall use any sugar, honey, foreign grains, *Guinea* pepper, *essentia binæ*, *coccus india*, or any unwholesome ingredients in the brewing of beer or ale, or mix any of them therewith, on pain of 20 *l.* to be recovered and mitigated as by the laws of excise, half to the king, and half to him shall sue.

*Stat. 24 Geo. 2. c. 40. [A. D. 1751.] made, among other purposes,*  
 "for granting to his majesty an additional duty upon spirituous liquors,  
 "and upon licences for retailing the same."

Brewers, inn-keepers, distillers or dealers in spirits, &c. not to act as justices relating to the distillery.

*Secl. 22.* "And be it further enacted by the authority aforesaid, That, from and after the said first day of *July* one thousand seven hundred and fifty-one, no person or persons whatsoever, being a common brewer of ale or beer, or innkeeper, distiller or other seller of or dealer in any kind of spirituous liquors, or who is, or are or shall be interested in any of the said trades or businesses, shall, during such time as he or they shall be such common brewer, innkeeper, distiller or other seller of or dealer in spirituous liquors, or interested in any of the said trades or businesses, be capable or have any power to act, or shall be directly or indirectly concerned in acting as a justice of the peace, in any matter or thing whatsoever, which shall in any ways concern the execution of the powers or authorities given or granted by any act or acts of parliament, in any wise relating to distillers or makers of low wines, spirits or strong waters for sale, or to the duty or duties imposed upon low wines, spirits or strong waters, or any other kind of spirituous liquors whatsoever, or to the granting licences to the retailers of spirituous liquors."

*And by stat. 26 Geo. 2. c. 13. secl. 12. Brewers, who are justices of the peace, are prohibited from granting licences for selling ale, &c. See this section at large under title Alehouses, page 25.*

Indictment against a brewer for knowingly selling and delivering 16 gallons of amber beer as and for 18 gallons, and receiving the

Mr. Norton, for the prosecutor, shewed cause why judgment should not be arrested: A rule for that purpose having been obtained, upon a motion made by Mr. Norton on *Monday 26th January* last, in arrest of judgment upon this indictment for knowingly selling amber-beer short of the due and just measure (whereof the defendant had been convicted.) The charge in the indictment was, "That *Thomas Wheatly* late of the parish of *St. Luke* in the county of *Middlesex* brewer, being a person of evil name, fame and dishonest

dishonest conversation, and *devising and intending to deceive and defraud one Richard Webb of his monies*, on &c. at &c. *falsely, fraudulently and deceitfully* did sell and deliver, and caused to be sold and delivered to the said Richard Webb sixteen gallons and no more of a certain malt liquor, commonly called amber, FOR AND AS eighteen gallons of the same liquor, which said liquor so as aforesaid sold and delivered did then and there *want two gallons of the due and just measure of eighteen gallons*, FOR WHICH *the same was sold and delivered* as aforesaid, (the said Thomas Wheatly then and there well knowing the same liquor so by him sold and delivered, to want two gallons of the due and just measure as aforesaid;) And he the said Thomas Wheatly did receive of the said Richard Webb the sum of fifteen shillings, &c. for eighteen gallons, &c. pretended to have been sold and delivered, &c. although there were only sixteen gallons so as aforesaid delivered: And he the said Thomas Wheatly him the said Richard Webb of two gallons of &c. fraudulently and unlawfully did deceive and defraud, to the great damage and fraud of the said Richard Webb, to the evil example of others in the like case offending, and against the peace of our sovereign lord the king, his crown and dignity.

Mr. Morton and Mr. Yates, who were of counsel for the defendant, (to arrest the judgment,) objected that the fact charged was nothing more than a mere breach of a CIVIL CONTRACT, not an indictable offence. To prove this, they cited *Rex v. Combrun*, P. 1751, 24 G. 2. B. R. Which was exactly and punctually the same case as the present, only *mutatis mutandis*. And *Rex v. Driffield*, Tr. 1754, 27, 28 G. 2. B. R. S. P. An indictment for a cheat, for selling coals as and for Two bushels, whereas it was a peck short of that measure. There the indictment was quashed on motion. *Rex v. Hannah Heath*—An indictment for selling and delivering seventeen gallons three quarts and half a pint of Geneva, (and the like of brandy,) as and for a greater quantity, was quashed on motion. In 1 Salk. 151. *Nebuff's* case, P. 4 Ann. B. R. A *certiorari* was granted to remove the indictment from the Old Bailey, because it was not a matter criminal. It was, "borrowing 600*l.* and promising to send a pledge of fine cloth and gold dust, and sending only some coarse cloth, and no gold dust." In *Tremaine* \*, title *Indictments for cheats*, — All of them either lay a conspiracy, or shew something amounting to a false token.

A mere civil wrong will not support an indictment. And here is no criminal charge: It is not alledged "That he used false measures." The prosecutor should have examined and seen that it was the right and just quantity.

Mr. Norton pro Rege offered the following reasons, why the judgment should not be arrested. The defendant has been convicted of the fact. He may bring a writ of error, if the indictment is erroneous. This is an indictable offence, it is a cheat, a public fraud, in the course of his trade: He is stated to be a brewer. There is a distinction between private frauds, and frauds in the course of trade. The same fact may be a ground for a private action, and for an indictment too. None of the cited cases were after verdict. It might here (for ought that appears to the contrary) have been proved, "That he sold this less quantity, by false measure." And every thing shall be presumed in favour of a verdict. And here is a false pretence,

price for 18 gallons, with intent to deceive and defraud; judgment was arrested; for this is not an offence indictable, but a civil injury to a private individual, owing to that private person's own carelessness; a mere non-performance of contract. 2 Bur. Rep. 1125-1130. Hil. 1 Geo. 3. *Rex v. Wheatly*.

\* Tremaine's Pleas of the crown, pa. 85 to 111.

at least : And it appeared upon the trial to be a very foul cause. — The counsel for the defendant, in reply, said that nothing can be intended or *presumed*, in a criminal case, but *secundum allegata et probata*. It might happen without his own *personal* knowledge. And they denied any distinction between this being done privately, and its being done in the course of trade.

LORD MANSFIELD — The question is, Whether the fact here alledged be an *indictable* crime or not? The fact alledged is — (Then his lordship stated the charge, *verbatim*.) The argument that has been urged by the prosecutor's counsel, from the present case's coming before the court *after a verdict*, and the cases cited being only of quashing upon motion *before any verdict*, really turns the other way : because the court may use a *discretion*, "whether it be right to quash upon motion or put the defendant to demur;" but after verdict they are *obliged* to arrest the judgment, if they see the charge to be insufficient. And in a *criminal* charge, there is no *latitude of intendment*, to include any thing *more* than is charged : the charge must be explicit enough to *support itself*. Here the *fact* is allowed ; but the consequence is denied : the objection is, that the fact is *not an offence indictable*, though acknowledged to be true as charged. And that the fact here charged should not be considered as an indictable offence, but left to a civil remedy by an action, is reasonable and right in the nature of the thing : because it is only an inconvenience and injury to a *private* person, arising from that private person's own negligence and *carelessness* in not measuring the liquor, upon receiving it, to see whether it held out the just measure or not. The offence that is indictable must be such a one as affects the *PUBLIC*. As if a man *uses false weights and measures*, and sells *by them* to all or to many of his customers, or uses them in the general course of his dealing : so, if a man defrauds another, under *false tokens*. For these are deceptions that *common* care and prudence are not sufficient to guard against. So, if there be a *conspiracy* to cheat : for *ordinary* care and caution is no guard against this. These cases are much more than mere private injuries : they are *public offences*. But here, it is a mere *private* imposition or deception : no false weights or measures are used ; no false tokens given ; no conspiracy ; only an imposition upon the person he was dealing with, in delivering him a less quantity instead of a greater ; which the other carelessly accepted. 'Tis only a non-performance of his contract : for which non-performance, he may bring his action. The selling an unsound horse, as and for a sound one, is not indictable : the buyer should be more upon his guard. The several cases cited are alone sufficient to prove, that the offence here charged is *not an indictable* offence. But besides these, my brother *Denison* informs me of another case, that has not been mentioned at the bar. It was *M. 6 G. 1. B. R. Rex v. Wilders*, a brewer : he was indicted for a cheat, in sending in, to Mr. *Hicks*, an alehouse-keeper, so many vessels of *ale* marked as containing such a measure, and writing a *letter* to Mr. *Hicks*, assuring him that they did contain that measure ; when in fact they did not contain such measure, but so much less, &c. This indictment was quashed on argument,

argument, upon a motion: which is a stronger case than the present. Therefore the law is clearly established and settled; and I think, on *right* grounds: but on whatever grounds it might have been originally established, yet it ought to be adhered to, after it is established and settled. Therefore (though I may be sorry for it in the present case as circumstanced;) the judgment must be arrested.

Mr. justice *Denison* concurred with his lordship. This is nothing more than an action upon the case turned into an indictment. 'Tis a *private breach of contract*. And if this were to be allowed of, it would alter the course of the law; by making the injured person a *witness* upon the indictment, which he could not be (for himself) in an action. Here are no false weights, nor false measures; nor any false token at all; nor any conspiracy. In the case of *The Queen v. Maccarty et al'* (6 *Mod.* 301.) there were false tokens, or what was considered as such. In the case of *The Queen v. Jones*, 1 *Salk.* 379. (2 *Lord Raym.* 1013. and 6 *Mod.* 105. *S. C.*) the defendant had received 20*l.* pretending to be sent by one who did not send him—*Et per cur.* “It is not indictable, unless he came with false tokens: We are not to indict one man for making a fool of another; let him bring his action.” If there were *false tokens* or a *conspiracy*, it is another case. *The Queen v. Maccarty* was a conspiracy, as well as false tokens. *Rex v. Wilders* was a much stronger case than this; and was well considered: that was an imposition in the *course of his trade*; and the man had *marked* the vessels, as containing more gallons than they did really contain, and had written a *letter* to Mr. *Hicks*, attesting that they did so. But the present case is no more than a *mere breach of contract*: he has not delivered the quantity which he undertook to deliver. The court use a *discretion* in quashing indictments on *motion*: but they are *obliged to arrest judgment* when the matter is *not indictable*. And *this* matter is *not* indictable: therefore the judgment ought to be *arrested*.

Mr. justice *Foster*:—We are obliged to follow settled and established rules already fixed by former determinations in cases of the same kind. The case of *Rex v. Wilders* was a strong case; (too strong perhaps; for there were false tokens, the vessels were marked as containing a greater quantity than they really did.)

Mr. justice *Wilmot* concurred. This matter has been fully settled and established, and upon a reasonable foot. The true distinction that ought to be attended to in all cases of this kind, and which will solve them all, is this—That in such impositions or deceits, where common prudence may guard persons against their suffering from them, the offence is not indictable, but the party is left to his civil remedy for the redress of the injury that has been done him: but where false weights and measures are used, or false tokens produced, or such methods taken to cheat and deceive, as people cannot, by any ordinary care or prudence be guarded against, there it is an offence indictable. In the case of *Rex v. Pinkney*, *P.* 6 *Geo. B. R.* upon an indictment “for selling a sack of corn (at *Rippon* market) which he falsely affirmed to contain a *Winchester* bushel, *ubi revera et in facto plurimum deficiebat, &c.*” The indictment was quashed upon



upon motion. In the case now before us, the prosecutor might have measured the liquor, before he accepted it: and it was his own indolence and negligence if he did not. Therefore common prudence might have guarded him against suffering any inconvenience by the defendant's offering him less than he had contracted for. This was the case of *Rex v. Pinkney*: and it was there said, that if a shop-keeper who deals in cloth, pretends to sell ten yards of cloth, but instead of ten yards bought of him, delivers only six, yet the buyer cannot indict him for delivering only six; because he might have measured it, and seen whether it held out as it ought to do, or not. In this case of *Rex v. Pinkney*; and also in that case of *Rex v. Combrum*, a case of *Rex v. Nicholson*, at the sittings before lord *Raymond* after *Michaelmas* term, 4 *Geo.* was mentioned; which was an indictment for selling six chaldron of coals, which ought to contain thirty-six bushels each, and delivering six bushels short: lord *Raymond* was so clear in it, that he ordered the defendant to be acquitted. *Per cur.* unanimously, The judgment must be arrested.

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## Bribery.

**B**RIBERY in a strict sense is taken for a great misprision of one in a judicial place, taking any valuable thing whatsoever, except meat and drink of small value, of any one who has to do before him any way, for doing his office, or by colour of his office, but of the King only. 1 *Hawk. P. C.* 168. 3 *Inst.* 145.

But bribery in a large sense is sometimes taken for the receiving or offering of any undue reward, by or to any person whatsoever, whose ordinary profession or business relates to the administration of public justice, in order to incline him to do a thing against the known rules of honesty and integrity; for the law abhors any the least tendency to corruption in those who are any way concerned in its administration, and will not endure their taking a reward for the doing a thing which deserves the severest of punishments. 1 *Hawk. P. C.* 168.

Also bribery sometimes signifies the taking or giving of a reward for offices of a public nature; and surely nothing can be more palpably prejudicial to the good of the public, than to have places of the highest concernment, on the due execution whereof the happiness of both king and people doth depend, disposed of not to those who are most able to execute them, but to those who are most able to pay for them; nor can any thing be a greater discouragement to industry and virtue, than to see those places of trust and honour, which ought to be the rewards of those who by their industry and diligence have qualified themselves for them, conferred on such who have no other recommendation but that of being the highest bidders: neither can any thing be a greater temptation to officers to abuse their power by bribery and extortion, and other acts of injustice, than the consideration

consideration of the great expence they were at in gaining their places, and the necessity of sometimes straining a point to make their bargain answer their expectation; for which reasons among many others, it is expressly enacted as follows by 12 Ric. 2. 1 Hawk. P. C. 169.

**Stat. 12 Ric. 2. c. 2.** [*A. D. 1388. intituled*] “None shall obtain offices by suit, or for reward, but upon desert.”

*Item* it is accorded, That the chancellor, treasurer, keeper of the privy seal, steward of the king's house, the king's chamberlain, clerk of the rolls, the justices of the one bench and of the other, barons of the exchequer, and all other that shall be called to ordain, name, or make justices of peace, sheriffs, escheators, customers, comptrollers, or any other officer or minister of the king, shall be firmly sworn, that they shall not ordain, name, or make justice of peace, sheriff, escheator, customer, comptroller, nor other officer nor minister of the king, for any gift or brocage, favour or affection; (2) nor that none which pursueth by him, or by other, privily or openly, to be in any manner office, shall be put in the same office, or in any other; (3) but that they make all such officers and ministers of the best and most lawful men; and sufficient to their estimation and knowledge.” 5 & 6 Ed. 6. c. 16.

*For the exposition of this act of 12 Ric. 2. see the trial of the earl of Macclesfield.*

**Stat. 5 & 6 Ed. 6. c. 16.** [*A. D. 1552. intituled*] “Against buying and selling of offices.”

“For the avoiding of corruption which may hereafter happen to be in the officers and ministers in those courts, places or rooms wherein there is requisite to be had the true administration of justice, or services of trust; (2) and to the intent that persons worthy and meet to be advanced to the place where justice is to be ministered, or any service of trust executed, should hereafter be preferred to the same, and no other: The penalty for buying or selling some sort of offices. 3 Bullstr. 91. 1 Roll 157, 236. 2 Salk. 468. 3 Lev. 289.

**Stat. 2.** “Be it therefore enacted by the king our sovereign lord, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That if any person or persons at any time hereafter bargain or sell any office or offices, or deputation of any office or offices, or any part or parcel of any of them, (2) or receive, have or take any money, fee, reward, or any other profit directly or indirectly, (3) or take any promise, agreement, covenant, bond, or any assurance to receive or have any money, fee, reward or other profit, directly or indirectly, for any office or offices, or for the deputation of any office or offices, or any part of any of them; (4) or to the intent that any person should have, exercise or enjoy any office or offices, or the deputation of any office or offices, or any part of any of them; (5) which office or offices, or any part or parcel of them, shall in any wise touch or concern the administration or execution of justice; (6) or the receipt, comptrolment or payment of any of the king's highness treasure, money, rent, revenue,

revenue, account, aulnage, auditorship, or surveying of any of the king's majesty's honours, castles, manors, lands, tenements, woods or hereditaments; (7) or any of the king's majesty's customs, or any administration or necessary attendance to be had, done, or executed in any of the king's majesty's custom-house or houses; (8) or the keeping of any of the king's majesty's towns, castles or fortresses, being used, occupied or appointed for a place of strength and defence; (9) or which shall concern or touch any clerkship to be occupied in any manner of court of record wherein justice is to be ministred; (10) That then all and every such person and persons, that shall so bargain or sell any of the said office or offices, deputation or deputations, or that shall take any money, fee, reward or profit for any of the said office or offices, deputation or deputations of any of the said offices, or any part of any of them, or that shall take any promise, covenant, bond, or assurance for any money, reward or profit to be given for any of the said office or offices, deputation or deputations of any of the said office or offices, or any part of any of them, shall not only lose and forfeit all his and their right, interest and estate which such person or persons shall then have, of, in or to any of the said office or offices, deputation or deputations, or any part of any of them, or of, in or to the gift or nomination of any of the said office or offices, deputation or deputations, for the which office or offices, or for the deputation or deputations of which office or offices, or for any part of any of them, any such persons shall so make any bargain or sale, or take or receive any sum of money, fee, reward or profit, or any promise, covenant, bond or assurance to have or receive any fee, reward, money or profit: (11) But also that all and every such person or persons, that shall give or pay any sum of money, reward or fee, or shall make any promise, agreement, bond or assurance for any of the said offices, or for the deputation or deputations of any of the said office or offices, or any part of any of them, shall immediately by and upon the same fee, money or reward given or paid, or upon any such promise, covenant, bond or agreement had or made, for any fee, sum of money or reward to be paid, as is aforesaid, be adjudged a disabled person in the law, to all intents and purposes, to have, occupy or enjoy the said office or offices, deputation or deputations, or any part of any of them, for the which such person or persons shall so give or pay any sum of money, fee or reward, or make any promise, covenant, bond or other assurance, to give or pay any sum of money, fee or reward.

The bargains and assurances shall be void. *Cro. El. 529. Stiles 29.* *Sec. 3.* " And be it also enacted by the authority aforesaid, That all and every such bargains, sales, promises, bonds, agreements, covenants and assurances as be before specified, shall be void, to and against him and them by whom any such bargain, sale, bond, promise, covenant or assurance shall be had or made.

To what offices this statute shall not extend. *Sec. 4.* " Provided always, That this act, or any thing therein contained, shall not in any wise extend to any office or offices, whereof any person or persons is or shall be seized of any estate of inheritance; (2) nor to any office of parkership, or of the keeping of any park, house, manor, garden,

garden, chase or forest, or to any of them; any thing in this act heretofore mentioned to the contrary thereof in any wise notwithstanding.

*Sec. 5.* "Provided also, That if any person or persons do hereafter offend in any thing contrary to the tenor and effect of this act, yet that notwithstanding, all judgments given, and all other act and acts executed or done, by any such person or persons so offending by authority or colour of the office or deputation which ought to be forfeited, or not occupied, or not enjoyed by the person so offending as is aforesaid, after the said offence so by such person committed or done, and before such person so offending, for the same offence be removed from the exercise, administration and occupation of the said office or deputation, shall be and remain good and sufficient in law, to all intents, constructions and purposes, in such like manner and form as the same should or ought to have remained and been, if this act had never been had or made.

Acts done by an officer removable, shall be good.

*Sec. 6.* "Provided also, That this act or any thing therein contained, shall not in any wise extend to any bargain, sale, gift, grant, nomination, bond, covenant, promise, agreement, or assurance, whatsoever it be, of, or for any the office or offices, deputation or deputations aforesaid, or any part of any of them had, made, done, concluded or agreed before the first day of *March* next coming, but that the same bargain, sale, gift, grant, nomination, bond, covenant, promise, agreement or assurance had, made, done, concluded or agreed before the said first day of *March*, shall always remain, continue and be in such force, strength and effect, as if this act had never been had or made; any thing before in this act mentioned to the contrary thereof in any wise notwithstanding.

A bargain for an office before the first day of *March*, &c.

*Sec. 7.* "Provided always, and be it enacted by the authority aforesaid, That this act, or any thing therein contained, shall not in any wise extend or be prejudicial or hurtful to any of the chief justices of the king's courts, commonly called the *King's Bench* or *Common Place*, or to any of the justices of assize that now be, or hereafter shall be, but that they and every of them may do in every behalf, touching or concerning any office or offices to be given or granted by them or any of them, as they or any of them might have done before the making of this act; any thing above mentioned to the contrary in any wise notwithstanding."

Offices given by the two chief justices, or justices of assize.

In the construction of this statute of 5 and 6 *Edw. 6.* the following points have been resolved;

1. That the office of chancellor, register, and commissary in ecclesiastical courts, are within the meaning of the statute, in as much as those courts do not only determine matters which are brought before them, merely *pro salute animæ*, but also have the decision of disputes concerning the lawfulness of matrimony and legitimation of children, which touch the inheritance of the subjects, and also hold plea of legacies and tithes, &c. in which respects they are courts of justice. 1 *Hawk. P. C.* 169.

2. That one who makes a contract for an office contrary to the purport of the said statute, is so far disabled to hold the same, that he cannot at any time during his life be restored to a capacity of holding it by any grant or dispensation whatsoever. 1 *Haw. P. C.* 169.

How bribery  
is punishable.

It is said, that at common law, bribery in a judge, in relation to a cause depending before him, was looked upon as an offence of so heinous a nature, that it was sometimes punished as high-treason before the 25 *Ed.* 3. And at this day it is certainly a very high offence, and punishable, not only with the forfeiture of the offender's office of justice, but also with fine and imprisonment. 1 *Hawk. P. C.* 169, 170.

Also all the other above-mentioned kinds of bribery, taken in a large sense, seem to be punishable with fine and imprisonment, &c. and in the time of king *James* the first, the earl of *M.* lord high treasurer of *England*, being impeached by the commons for refusing to hear petitions referred to him by the king, till he had received great bribes, and for other such like misdemeanours, was, by sentence of the lords, deprived of all his offices, and disabled to have any for the future, or to sit in the parliament; and was fined fifty thousand pounds, and imprisoned during the king's pleasure. 1 *Hawk. P. C.* 170.

## Bridges.

**P**UBLICK bridges which are of general conveniency, are of common right to be repaired by the whole inhabitants of that county in which they lie. 1 *Bac. Abr.* 329. cites 1 *Rel. Abr.* 367. 2 *Inst.* 701. 13 *Co.* 33. *Cro. Car.* 365.

But a corporation aggregate, either in respect of a special tenure of certain lands, or in respect of a special prescription; also any other person, by reason of such a special tenure, may be compelled to repair them. 1 *Bac. Abr.* 329.

Any particular inhabitant or inhabitants of a county, or tenant, or tenants of land, chargeable with the repairs of a common bridge, may be made defendants to an indictment for not repairing it, and be liable to pay the whole fine assessed by the court, for the default of such repairs, and shall be put to their remedy at law, for a contribution from those who are bound to bear a proportionable share in the charge; for cases of this nature require the utmost expedition; and bridges being of absolute necessity, are not to lie unrepaired till suits are determined. 1 *Bac. Abr.* 329. cites 1 *Jon.* 173. *Popb.* 192. 6 *Mod.* 307. *Salk.* 358.

If a manor, held by the service or tenure of repairing a common bridge, comes, by the alienation of the lord, into the hands of several persons, every alienee being tenant of any parcel, either of the demesne or services, shall be liable to the whole charge, and put to their remedy for a contribution from the rest; and though the lord on such alienation, agreed that the purchasers should be exempt from the charges, yet however binding such agreements might be among themselves, it shall not work a general injury, by making the remedy the publick had, more difficult than it was before. 1 *Salk.* 358.

So if a manor subject to such charge, comes into the hands of the crown, yet the duty upon it continues, and any person claiming afterwards under the crown, the whole manor, or any part thereof, shall be liable to an indictment or information, for want of due repairs. 1 *Salk.* 358.

If part of a bridge lie within a franchise, those of the franchise may be charged with the repairs for so much; also by a special tenure, a man may be charged with the repairs of one part of a bridge, and the inhabitants of the county are to repair the rest. *Hawk. P. C.* 221. *Raym.* 384, 385.

It hath been resolved, that it is not sufficient for the defendant to an indictment for not repairing a bridge, to excuse themselves by shewing that they are not bound either to repair the whole, or any part of the bridge, without shewing what other person is bound to repair the same; and it is said, that in such case the whole charge shall be laid upon such defendants, by reason of their ill plea. 1 *Hawk. P. C.* 221. *Pep.* 192.

It is said that where such defendants plead, that *A. B.* ought to repair the bridge mentioned in the indictment, and take a traverse to the charge against themselves, the attorney general in this special case, may take a traverse upon a traverse, and insist that the defendants are bound to the repairs, and traverse the charge alledged against *A. B.* and that an issue ought to be taken of such a traverse, and that the attorney general may afterwards surmise that the defendants are bound to repair it, and that the whole matter shall be tried by an indifferent jury. 1 *Hawk. P. C.* 221. 1 *Sid.* 140.

It seems clear that those who are bound to repair such bridges, must make them of such height and strength as shall be answerable for the course of the water, whether it continue in the old channel, or make a new one; and that they are not punishable as trespassers for entering on any adjoining land for such purpose, or for laying on the materials requisite for such repairs. 1 *Hawk. P. C.* 221.

**Magna Charta**, 9 *Hen. 3. c.* 15. [*A. D.* 1225. intituled] “Making of bridges and banks.”

“No town nor freeman shall be distrained to make bridges nor banks, but such as of old time and of right have been accustomed to make them in the time of King *Henry* our grandfather.”

Here it is to be observed, says lord *Coke* in his comment, on this chapter, that in the reign of king *John*, and of his elder brother king *Richard*, which were troublesome and irregular times, divers oppressions, exactions, and injuries, were incroached upon the subject in these king's names, for making of bulwarks, fortresses, bridges and banks, contrary to law and right. But the reign of king *Henry* 2. is commended for three things; first, that his privy council were wise, and expert in the laws of the realm. Secondly, that he was a great defender, and maintainer of the rights of his crown, and of the laws of his realm. Thirdly, that he had learned and upright judges, who executed justice according to his

laws; therefore for his great and never dying honour, this and many other acts made in the reign of *Henry* 3. do refer to his reign, that matters should be put in practice, as they were of right accustomed in his time; so that this chapter is a declaration of the common law, and so in the reign of *H.* 4. and *H.* 5. the parliaments refer to the reign of king *Edward* 1. who was a prince of great fortitude, wisdom and justice. 2 *Inst.* 29.

**Stat.** 22 *H.* 8. c. 5. [*A. D.* 1530. intituled] “ For bridges and highways.”

A remedy to  
repair decayed  
bridges in  
highways, and  
by whom.

13 Co. 33.

Poph. 192.

2 *Inst.* 700.

Justices of

peace may a-

ward process

against them

who ought to

repair bridges.

This act is en-

forced by

1 An. stat. 1.

c. 18. so far

as not altered

by that statute.

“ Be it enacted by the king our sovereign lord, and the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, That the justices of peace in every shire, of this realm, franchise, city or borough, or four of them at least, whereof one to be of the *quorum*, shall have power and authority to inquire, hear and determine in the king’s general sessions of peace, of all manner of annoyances of bridges broken in the highways, to the damage of the king’s liege people, and to make such process and pains upon every presentment afore them for the reformation of the same, against such as owen to be charged for the making or amending of such bridges, as the king’s justices of his bench use commonly to do, or as it shall seem by their discretions to be necessary and convenient for the speedy amendment of such bridges.”

*Secl.* 2. “ And where in many parts of this realm it cannot be known and proved, what hundred, riding, wapentake, city, borough, town or parish, nor what person certain, or body politick, ought of right to make such bridges decayed, by reason whereof such decayed bridges, for lack of knowledge of such as owen to make them, for the most part lie long without any amendment, to the great annoyance of the king’s subjects :”

*Secl.* 3. “ For the remedy thereof, be it enacted by authority aforesaid, That in every such case the said bridges, if they be without city, or town corporate, shall be made by the inhabitants of the shire or riding within the which the said bridge decayed shall happen to be ; (2) and if it be within any city or town corporate, then by the inhabitants of every such city or town corporate wherein such bridges shall happen to be ; (3) and if part of any such bridges so decayed happen to be in one shire, riding, city or town corporate, and the other part thereof in another shire, riding, city or town corporate, or if part be within the limits of any city or town corporate, and part without, or part within one riding, and part within another ; that then in every such case, the inhabitants of the shires, ridings, cities or towns corporate shall be charged, and chargeable to amend, make and repair such part and portion of such bridges so decayed, as shall lie and be within the limits of the shire, riding, city or town corporate, wherein they be inhabited at the time of the same decays.”

*Secl.* 4. “ And be it further enacted, That in every such case where it cannot be known and proved, what persons, lands, tenements and bodies politick owen to make and repair such bridges, that for speedy reformation

tion

tion and amending of such bridges, the justices of the peace within the shires or ridings wherein such decayed bridges been out of cities and towns corporate, and if it be within cities or towns corporate, then the justices of peace within every such city or town corporate, or four of the said justices at the least, whereof one to be of the *quorum*, shall have power and authority within the limits of their several commissions and authorities, to call before them the constables of every town and parish, being within the shire, riding, city or town corporate, as well within liberty as without, wherein such bridges, or any parcel thereof shall happen to be, or else two of the most honest inhabitants within every such town, or parish in the said shire, riding, city or town corporate, by the discretion of the said justices of peace, or four of them at the least, whereof one to be of the *quorum* ; (2) and at and upon the appearances of such constables or inhabitants the said justices of peace, or four of them, whereof one to be of the *quorum*, with the assent of the said constables or inhabitants, shall have power and authority to tax and set every inhabitant in any such city, town or parish within the limits of their commissions and authorities, to such reasonable aid and sum of money, as they shall think by their discretions convenient and sufficient for the repairing, re-edifying, and amendment of such bridges ; (3) and after such taxation made, the said justices shall cause the names and sums of every particular person so by them taxed, to be written in a roll indented : (4) and shall also have power and authority to make two collectors of every hundred, for collection of all such sums of money by them set and taxed ; which collectors, receiving the one part of the said roll indented under the seals of the said justices, shall have power and authority to collect and receive all the particular sums of money therein contained, and to distrain every such inhabitant, as shall be taxed and refuse payment thereof, in his lands, goods and chattels, and to sell such distress, and of the sale thereof retain and perceive all the money taxed, and the residue (if the distress be better) to deliver to the owner thereof ; (5) and that the same justices, or four of them, within the limits of their commissions and authorities, shall also have power and authority to name and appoint two surveyors, which shall see every such decayed bridge repaired and amended from time to time, as often as need shall require, to whose hands the said collectors shall pay the said sums of money taxed, and by them received ; (6) and that the collectors and surveyors, and every of them, and their executors and administrators, and the executors and administrators of them, and every of them, from time to time shall make a true declaration and account to the justices of peace of the shire, riding, city or town corporate, wherein they shall be appointed collectors or surveyors, or to four of the same justices, whereof one to be of the *quorum*, of the receipts, payments, and expences of the said sums of money : (7) and if they or any of them refuse that to do, that then the same justices of peace, or four of them, from time to time by their discretions shall have power and authority to make process against the said collectors and surveyors, and every of them, their executors and administrators, and the executors and administrators of every of them, by attachments.

The justices may tax the inhabitants with the assent of the constables.

By 1 An. Stat. 1. c. 18. sessions of the peace may tax the several townships, &c.

Two collectors of every hundred.

The justices shall appoint two who shall repair the bridge.

The collectors and surveyors shall account to the justices,



tachments under their seals, returnable at the general sessions of peace; (8) and if they appear, then to compel them to account as is afore said; or else if they or any of them refuse that to do, then to commit such of them as shall refuse, to ward, there to remain without bail or mainprise till the said declaration and account be truly made."

The justices may make process into every shire against offenders.

Sheriffs, &c. shall serve process upon the offenders.

The five ports excepted.

Allowance made to the surveyors and collectors.

*Sec. 5.* "And where any bridge or bridges lien in one shire or riding, and such persons inhabitants, bodies politic, lands or tenements, which owen to be charged to the making and amending of such bridges, lien and abiden in another shire or riding, or where such bridges been within any city or town corporate, and the persons inhabitants, bodies politic, lands or tenements, that owen to make or repair any such bridges, lien and been out of the said cities and towns corporate; Be it enacted, That in every such case the justices of peace of the shire, city or town corporate, within the which such decayed bridges, or any part thereof shall happen to be, shall have power to enquire, hear and determine all such annoyances, being within the limits of their commissions or authorities; (2) and if the annoyances be presented, then to make process into every shire within this realm against such as owen to make or amend any such bridges so presented before them to be decayed, to the annoyance and let of the passage of the king's subjects, and to do further in every behalf in every such case, as they might by authority of this act, in case that the persons or bodies politic, lands or tenements, which owen to be charged to the amending or making of such bridges or any part thereof, were in the same shire, riding, city or town corporate, where such annoyance shall happen to be. (3) And that all sheriffs and bailiffs of liberties and franchises shall truly serve and execute such process, as shall come to their hands from the said justices of peace afore whom any presentment shall be had for any such annoyance, according to the tenour and effect of the said process to them directed, without favour, affection or corruption; upon pain to make such fine as shall be set upon them or any of them by the discretion of the said justices.

*Sec. 6.* "Provided alway, that this act, or any thing therein contained, be not prejudicial to the liberties of the five ports, or members of the same. And for reformation of annoyance of bridges within the said ports and members.

*Sec. 7.* "Be it enacted by authority of this present parliament, That the warden, mayors and bailiffs elected, and jurates of the same ports, and every of them, have power and authority to enquire, hear and determine all manner of common annoyances of bridges within the same ports and members, and to make such process, pains, taxations, and all other things within the same ports and members, as the justices of peace may do in other shires or places out of the same ports, by virtue and authority of this present act in every behalf."

*Sec. 8.* "And be it further enacted by the authority aforesaid, That the justices of peace, or four of them, shall have full power and authority to allow such reasonable costs and charges to the said surveyors and collectors, as by their discretions shall be thought convenient.

*Sec.*

*Stat. 9.* "Forasmuch that albeit bridges decayed were amended and repaired according to the tenour of this act, yet nevertheless if speedy remedy for the amendment of the ways next adjoining to every of the ends of such bridges should not be had and made, the king's subjects should take little or none avail or commodity in many parts of this realm by the making of the bridges: (2) In consideration whereof, Be it enacted by the king our sovereign lord, and the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, That such part and portion of the high-ways in every part of this realm, as well within franchise, as without, as lie next adjoining to any ends of any bridges within this realm, distant from any of the said ends by the space of three hundred foot, be made, repaired and amended as often as need shall require; (3) and that the justices of the peace in every shire of this realm, franchise city or borough, or four of them at the least, whereof one to be of the *Quorum*, within the limits of their commissions and authorities, shall have power and authority to inquire, hear and determine in the king's general sessions of peace, all manner of annoyances of and in such high-ways, so being and lying next adjoining to any ends of bridges within this realm, distant from any one of the ends of such bridges three hundred foot, and to do in every thing and things concerning the making, repairing and amending of such highways, and every of them, in as large and ample manner, as they might and may do to and for the making, repairing, and amending of bridges, by virtue and authority of this present act."

An order for the amending of the ways at the ends of bridges.

*Stat. 1 Ann. stat. 1. c. 18. [A. D. 1701.]* Made, among other purposes, "to explain and alter the act made in the two and twentieth year of king Henry the eighth, concerning repairing and amending of bridges in the highways."

"Whereas by an act of parliament in the two and twentieth year of the reign of king Henry the eighth, intituled, "An act concerning repairing and amending of bridges in the highways," it is amongst other things therein enacted, That in every case where it cannot be known and proved, what persons, lands, tenements, and bodies politic ought to make and repair such bridges, that for speedy reformation and amending of such bridges, the justices of the peace within their several counties, shires, ridings and divisions, cities and towns corporate, or any four of them, whereof one to be of the *Quorum*, shall within the limits of their several commissions call before them the constables of every town and parish, or else two of the most honest inhabitants of every such town and parish, and, with the assent of the said constables or inhabitants, shall tax and set every inhabitant in such city, town and parish, to such reasonable aid, and sums of money, as they shall think by their discretions convenient for the repairing of such bridges, and after such taxation made, shall cause the names and sums of every particular person so by them taxed, to be written in a roll indented, one part whereof is to be delivered, under the hands and seals of the said justices, to two collectors

22 H. 8. c. 5. concerning the amending of bridges.

collectors appointed by the said justices for every hundred, who are thereby empowered to collect the same; which method and manner of taxing and collecting the said money for repair of decayed bridges and the highways thereunto adjoining, having by long experience been found very troublesome, burthenfome and chargeable to the several counties, cities, towns corporate, ridings, and divisions: And whereas in many places within this kingdom, more money than is necessary for the repair of such bridges, hath been taxed and collected, or the money which hath been so taxed and collected, hath been misemployed, and not laid out in the repair of such bridges, as was intended; For remedy of all which mischiefs and inconveniencies for the future, may it please your most excellent majesty that it may be enacted; and Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all and every the clauses, matters and things in the said act of the two and twentieth year of the reign of the said king *Henry* the eighth, not hereby altered, shall be and continue in full force and virtue, to all intents, constructions and purposes whatsoever, relating to the repairing of decayed bridges, and the highways thereunto adjoining."

further continued.

For collecting money for repair of decayed bridges, justices of peace may assess every town, &c. in proportion.

Assessments how to be levied, &c.

Treasurers to be appointed and monies how employed. On non payment to be

*Señ. 2.* "And be it further enacted by the authority aforesaid, That for the more easy taxing and collecting of the money for the repair of decayed bridges, and that the same may be duly applied to the purposes for which it is intended, the justices of the peace, within the several limits of their commissions, shall, at their general or quarter sessions of the peace, from and after the first of *May*, which shall be in the year of our lord one thousand seven hundred and two, have full power and authority, upon due presentment to them made, that any bridge within their respective commissions or authorities is out of repair, and which by them hath usually, or ought to have been repaired and maintained, to assess upon every town, parish or place within their respective commissions, in proportions upon each respective town and parish, as they usually have been assessed towards the repair of bridges; which money so assessed, as aforesaid, shall be levied and collected by the respective constables of each parish, township, hamlet or vill, or by such other person and persons, and in such manner, as the said justices, by their order at such sessions, shall in that behalf direct and appoint; and the money thereby raised shall (by such constables or other persons so as aforesaid by them collected) be paid over by them to the high constables of every hundred, in any such county, city, riding or division, in six days after they shall have received the same, and the high constables shall, and are hereby required, in ten days after their receipt, to pay the same into the hands of such person and persons, as the said justices by their order at such sessions shall direct and appoint to be treasurers and receivers of the same, and the money thereby raised shall be employed and accounted for, according to the orders and directions of the said justices, for and towards the amending of such decayed bridges, and the highways at the end of the said bridges, from time to time, as need shall require; and the said assessments shall be levied by distress and sale of the goods of every person so assessed,

assessed, not paying the same ten days after demand, rendering the over-plus of the value of the goods so distrained to the owner and owners thereof, the necessary charges of making and selling such distress being first deducted."

*Seet. 3.* "And to the end that the money, which is hereby intended to be assessed and levied, may be duly collected, paid and applied to the several purposes for which it is intended, Be it further enacted by the authority aforesaid, That every high constable, church-warden, overseer of the poor or petty constable, or other person that shall neglect to assess, collect or pay the money hereby intended to be raised; as is herein before directed, shall for every such offence forfeit the sum of forty shillings; and every treasurer, that shall pay any money but by the order of such justices of the peace at such sessions, which order the said justices are hereby required and commanded to make, only for the building, repairing or amending such bridges, and the highways at the end of such bridges, as aforesaid, shall for every such offence forfeit the sum of five pounds."

*Seet. 4.* "And whereas upon presentments and indictments for not repairing such bridges, and the highways at the end of such bridges, the fines imposed and set upon such presentments and indictments, and other fines and issues, for not repairing, building and amending such bridges, and the highways at the end of such bridges, are returned into the Court of *Exchequer*, or other courts; Be it therefore further enacted by the authority aforesaid, That no fine, issue, penalty or forfeiture shall hereafter be returned into the Court of *Exchequer*, or other court, but shall be levied and paid into the hands of the treasurer or treasurers so, as aforesaid, appointed by the said justices, to be accounted for by the said treasurer, and to be applied by the said justices towards the building, repairing or amending such bridges, and the highways at the end of such bridges, and to no other end or purpose whatsoever."

*Seet. 5.* "And be it enacted by the authority aforesaid, That all matters concerning the repairing and amending of the bridges and highways, herein before mentioned, shall be determined in the county where they lie, and not elsewhere; and that no presentment, or indictment for not repairing such bridges, or the highways at the end of such bridges, shall be removed by *certiorari* out of the said county into any other court."

*Seet. 6.* "And be it further enacted by the authority aforesaid, That the said justices of the peace at such general quarter-sessions, as aforesaid, shall have full power and authority to allow such persons concerned in the execution of this present act any sum not exceeding three pence in the pound."

*Seet. 7.* "And be it further enacted by the authority aforesaid, That if any action or suit shall be hereafter commenced or prosecuted against any person or persons by this act authorized to put the same in execution, every person or persons so sued may plead the general issue, and give this act, or the said recited act, made in the two and twentieth year of the reign of *Henry* the eighth, and the special matter, in evidence; and if the plaintiff shall become nonsuit, or forbear further prosecution, or suffer discontinu-

ance, or if a verdict pass against him or her, the said defendant and defendants shall recover his and their double costs, for which he and they shall have the like remedy, as in cases where costs by law are given to the defendants."

Persons and things exempted. *Sec.* 8. " Provided always, That this act nor any thing therein contained shall excuse or discharge any particular persons, estates or places from repairing any bridge, which they have heretofore usually repaired."

Penalties how to be levied. *Sec.* 9. " And be it further enacted by the authority aforesaid, That all the penalties and forfeitures incurred by this act shall be applied towards the repairing the said bridges and highways at the ends of the same."

*Stat.* 12 *Geo.* 2. c. 29. [*A. D.* 1739. *Intituled*] " An act for the more easy assessing, collecting, and levying of county rates."

Preamble, reciting the acts, 22 *Hen* VII. c. 5. 1 *Annæ*, *stat.* 1. c. 18. " Whereas by an act passed in the twenty-second year of the reign of king *Henry* the eighth, for repairing and amending bridges and highways : and whereas by another act passed in the first year of the reign of her late majesty queen *Anne*, to explain and alter the said act, it is, for the more easy taxing and collecting the money for the repair of such bridges and highways thereunto adjoining (amongst other things) enacted, That the justices of the peace within the several limits of their commissions shall, at their general or quarter-sessions of the peace, have full power and authority, upon due presentment to them made that any bridge within their respective commissions or authorities is out of repair, and which by them hath usually, or ought to have been repaired and maintained, to make assessments upon every town, parish or place, within their respective commissions for that purpose, in proportions upon each respective town and parish, as they usually have been assessed towards the repair of bridges ; which assessments are to be levied and collected in the manner prescribed by the said act."

No repairs of bridges, &c. but upon presentments of the grand jury. *Sec.* 13. " And be it further enacted by the authority aforesaid, That no part of the money to be raised and collected in pursuance of this act shall be applied to the repair of any bridges, gaols, prisons, or houses of correction, until presentments be made by the respective grand juries, at the assize, great sessions, general gaol-delivery, or general or quarter-sessions of the peace held for any county, riding, division, city, town corporate or liberty, of the insufficiency, inconveniency, or want of reparation of their bridges, gaols, prisons or houses of correction."

Justices to contract with persons for public repairs, *Sec.* 14. " And be it further enacted by the authority aforesaid, That from and after the first day of *June* one thousand seven hundred and thirty-nine, when any public bridges, ramparts, banks or cops, or other works, are to be repaired at the expence of any county, city, riding, hundred, division, liberty or town corporate ; it shall and may be lawful to and for the justices of the peace at their general or quarter-sessions respectively, or the greater part of them then and there assembled, if they think proper and convenient, after presentment to be made as aforesaid of the want of reparation of such bridges, ramparts, banks or cops, to contract and agree with any person or persons for rebuilding, repairing, and amending of such bridges, ramparts, banks or cops, as shall be within their

their respective counties, cities, ridings, hundreds, divisions, liberties or towns corporate, and all other works which are to be repaired and done by assessment on the respective counties, cities, ridings, hundreds, divisions, Liberties or towns corporate, for any term or terms of years, not exceeding seven years, at a certain annual sum, payment, or allowance for the same; such contractor or contractors giving sufficient security for the due performance thereof, to the respective clerk of the peace for the time being, or the town clerk, high bailiff, or chief officer of any city, town corporate or liberty; and that such justices at their respective general or quarter-sessions shall give public notice of their intention of contracting with any person or persons for rebuilding, repairing and amending the bridges, ramparts, banks or cops, and other works aforesaid; and that such contracts shall be made at the most reasonable price or prices which shall be proposed by such contractors respectively; and that all contracts when agreed to, and all orders relating thereto, shall be entered in a book, to be kept by the respective clerk of the peace for the time being, or the town clerk, high bailiff or chief officer of any city, town corporate or liberty, for that purpose; who is and are hereby required to keep them amongst the records of such county, city, town corporate or liberty, to be from time to time inspected at all seasonable times by any of the said justices within the limits of their commissions; and by any person or persons employed or to be employed by any parish, township or place, contributing to the purposes of this act, without fee or reward.

upon public notice,

**Stat.** 14 Geo. 2. c. 33. [A. D. 1741.] *Made, among other purposes, "to supply some defects in the laws for repairing and rebuilding country bridges."*

Whereas it does and may happen, that when county bridges are to be rebuilt or repaired, a piece or parcel of ground thereto adjoining may be of great use or service, either for enlarging such bridges, or more commodiously rebuilding them: And whereas there is no power given by the laws in being for the rebuilding or repairing of county bridges to the justices of the peace, to purchase any such pieces or parcels of ground: And whereas by an act made in the thirteenth year of the reign of his present majesty, intituled, "An act for amending and enforcing the laws relating to rogues, vagabonds, and other idle and disorderly persons, and for reducing the same into one act of parliament; and also for amending the laws for erecting, providing, and regulating houses of correction;" it is (amongst other things) enacted, That upon the presentment of the grand jury at the assizes, great session, or general gaol-delivery, held for any county or liberty, that there is no house of correction, and that it will be necessary to provide one or more house or houses of correction in such county or liberty, or that the house or houses of correction in any such county or liberty is or are not sufficient, and want to be enlarged; the justices of the peace at their general or quarter-sessions shall have power to build, erect, or enlarge one or more fit or convenient house or houses of correction, or to purchase one or more convenient house or houses

Preamble reciting the act, 13 Geo. 2. c.

24.

Justices at their  
quarter-ses-  
sions may pur-  
chase lands to  
build county  
bridges.

for that purpose, or to purchase land to erect such house or houses of correction upon, and to make a convenient backside or backside, outlet or outlets thereto: And whereas in some counties and liberties, where it is necessary to have a house or houses of correction, there is or may be no assise, great session, or general gaol-delivery, and in consequence there can be no presentment of such grand jury, so that in such cases the said act is rendered ineffectual: Therefore for the better repairing and rebuilding county bridges, and for supplying the defects of the said recited act, so far as the same relates to the repairing, enlarging, building and providing houses of correction, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June* one thousand seven hundred and forty-one, the justices of the peace of any county, city, riding, liberty or division, at their general sessions, or general quarter-sessions assembled, or the major part of them, shall have power, and are hereby authorized, to purchase of, or agree or contract with, any person or persons, bodies politick or corporate for any piece or parcel of land adjoining or near to any county bridge within the limits of their respective commissions, for the more commodious enlarging or convenient rebuilding the same; which pieces or parcels of land shall not exceed one acre in the whole for any such bridge, and shall from time to time be paid for by the respective county treasurers, out of any monies raised or to be raised by virtue of an act made in the twelfth year of the reign of his present majesty, intituled, *An act for the more easy assessing, collecting, and levying of county rates*; such treasurers being thereunto authorized, by orders under the hands and seals of the respective justices of the peace at their general sessions, or general quarter-sessions, or the major part of them; which lands so purchased shall be conveyed to such person or persons, as the said justices of the peace at their general sessions, or general quarter-sessions, or the major part of them shall respectively appoint, in trust, and for the uses and purposes of enlarging or rebuilding such bridges respectively.

*Certiorari*

may be granted where private persons are charged to repair a bridge.  
Stran. 900.  
East. 4 Geo.  
2. Rex. v.  
inhab. of Hamworth in co. Stafford.

Upon motion to quash a *certiorari* to remove an indictment against the defendants at sessions, for not repairing a bridge; it was insisted, that by 1 Ann. c. 18. the *certiorari* is taken away. To which it was answered, and resolved by the court, that this act extended only to bridges where the county is charged to repair; and that where a private person or parish is charged, and the right will come in question, the act 5 & 6 W. & M. c. 11. had allowed the granting a *certiorari*. And therefore they refused to quash it.

Tenant at will is obliged to repair a house adjoining to a common bridge. 1d.

The defendant *Watson* was indicted, for that he was such a day possessed of a house in *Lynn Regis* adjoining to the common bridge; that he ought to repair the said house *ratione tenurae*; but that he permitted it to be so much out of repair, that it was ready to fall upon the queen's subjects passing over the said bridge, &c. Upon Not guilty pleaded, the jury found a special

cial verdict, that *Watson* was but tenant at will of the said house, and conclude with a special conclusion, praying the judgment of the court, whether he was obliged *ratione tenuræ*, to repair the house. And after argument by Mr. *Montague* for the defendant, and by Mr. *Weld* for the queen, it was adjudged, that the defendant, as tenant at will only, ought to repair the house, so that the public be not prejudiced by the want of repairs, but that he is not compellable to repair as to his landlord. And that is shewn well enough in this indictment. The only objection is, that he is not chargeable to repair *ratione tenuræ*; but though that is improper, yet it shall be intended of the possession, and not of a service. And judgment was given against the defendant.

An information was exhibited against the defendant, for that, that he and all the lords of the manor of *D.* have time whereof, &c. been obliged to repair a bridge, &c. which was out of repair, &c. Upon Not guilty pleaded, and trial before *Holt* chief justice at *Nisi prius Hertford summer assises* 1 Ann. reg. it was held by him, that a prescription, that the lords of the manor ought to repair the bridge, without saying *ratione tenuræ*, or *ratione terraræ*, was good; because (by him) the manor may have been granted to be held by the service of repairing of this bridge before the statute of *Quia emptores terrarum*; or the king may make such a grant at this day, he not being bound by the said statute. And in pleading one may say, that he is obliged as lord of the manor. But indeed it is by reason of the demesnes of the manor; and therefore if part of the demesnes be granted to *J. S.* he will be obliged to contribute to the repairs; but the information or indictment may be against any of them; and though it appear upon the evidence, that another is obliged also, yet the defendant must be convicted. And so the defendant was convicted in this case; though he proved upon the evidence, that others were obliged to repair as well as himself. Afterward in Michaelmas term Mr. *Broderick* moved in arrest of judgment, that it does not sufficiently appear by this information, that the defendant is obliged to repair this bridge; for regularly the county ought to repair the public bridges; and no man shall be charged with the reparation of them, except *ratione tenuræ*, or by prescription; and therefore it ought to have been shewn here, by which of these two means the defendant became chargeable with these repairs. And he cited *Noy* 93. *Latch* 206. *Stile* 108. *Sir H. Spiller's case*. *And.* 400. And at the assises, as also upon the first motion here, *Holt* chief justice said, that this amounted to a *ratione tenuræ*. But judgment was stayed, *quousque*, &c. But afterwards at another day, Mr. *Williams* moving for judgment for the queen, *Holt* chief justice *mutata opinione*, said, that altho' the defendant was lord of the manor, yet that was no reason that he should repair the bridge; but some particular charge ought to be shewn, as *ratione tenuræ*, or by prescription. And in such case, where a man is obliged to repair a bridge, his tenant for years being in possession will be obliged to do it; and if he fail, he will be indictable for it. But he said, that where a man is obliged to make fences against another, it is enough to say, that *omnes occupatores* ought to repair, &c. because that lays a charge upon the right

Raym. East.  
2 Ann. Re-  
gina v. Wat-  
son.  
Information  
will not lie  
against a lord  
of a manor  
who is bound  
to repair a  
bridge, with-  
out saying *ra-  
tione tenuræ*, or  
shewing a pre-  
scription. Id.  
Raym. 792,  
804.  
Trin. 1 Ann.  
Regina v Sir  
John Buck-  
nall.



of another, which it may be, he cannot particularly know. See *Cro. Jac.* 665. *Holbatch v. Warner*. All the other judges were of the same opinion, and judgment was arrested.

A *mandamus* to make a rate for repair of a bridge must be directed to the justices of peace of the county, and not to the justices of a particular liberty  
1 d. Raym.  
1249 East.  
5 Ann.  
*Queen v. Justices of the peace of the liberty of St. Peter in York.*

A *mandamus* was directed to them, reciting, that whereas an ancient bridge called *Tadcaster* bridge, situate partly in the county of the city of *York*, and partly in the west-riding of the county of *York*, was lately fallen down, and that it ought to be repaired by the inhabitants of the county of the city, and of the west-riding of the county respectively; and that it was so done by them, except only the inhabitants of the liberty of *St. Peter's* in the city, and county of the city; and that the inhabitants of the city laid out in the repair of their part 1449 *l.* and that the share of the inhabitants of the liberty of *St. Peter's* came to 30 *l.* which they had refused to pay, and the justices refused to make a rate for it according to the form of the statute; and therefore commanded them to make and impose a rate upon the inhabitants within the liberty in the city and county of the city, for such their part of the charges about the building and repairing of the bridge according to the form of the statute, and cause it to be collected and levied and paid to the mayor and citizens, or their attorney or treasurer, to their use, &c. To this the justices returned, that the city of *York* is an ancient city, and the citizens and inhabitants time out of mind have been a body politic; and that the city of *York* and suburbs and precincts of the same, 11 *February* 27 *Hen.* 6. and long before, were a county by itself, and called the county of the city of *York*; and that the hundred of *Anistie* was part of the west-riding of the county of *York*, and that *Hen.* 6. 11 *February* 27th of his reign, by his letters patent granted, that the hundred of *Anistie* should be annexed to the county of the city of *York*, and that the city and suburbs of *York*, and the precinct of the hundred of *Anistie*, should be the county of the city of *York*, divided from the county of *York*, saving to the church of *York*, and the archbishop, dean and chapter of the same, and to all communities ecclesiastical and temporal, and all other persons, all manner of franchises, privileges, rights commodities, and customs, to them or any of them of right belonging, *ita quod* by that grant no prejudice in any manner should be done to them, *in possessione, seu proprietate* of any liberties, franchises, privileges, rights, commodities, or customs of which they were then seised or possessed, or which did then belong to them: that the liberty of *St. Peter's* in *York* in the city and county of the said city is, and at the making of the said letters patent and long before was an ancient liberty, of which the dean and chapter of *York* is seised in fee, and that by all that time they had justices of peace there, and that the justices of peace of the county of *York*, or of the county of the city of *York*, had nothing to do there: that the part of the bridge in question at the making of the letters patent lay in the hundred of *Anistie*, out of the liberty of *St. Peter's*, and out of the jurisdiction of the justices of peace of that liberty, and before that time was, and ought to be repaired by the inhabitants of the west-riding of the county of *York*, and from that time, and at the time of making the act of 22 *Hen.* 8. and ever since was used, and ought to be repaired by the inhabitants

of the city, and of the hundred of *Anistie* without any contribution from the inhabitants of the liberty, and that it was known and could be easily proved at the time of making the said act, and is known and can be easily proved to be so, &c.

In this case it was resolved, first, that the return was ill in substance, because this charge came upon the city by uniting the hundred of *Anistie* to it, and consequently the liberty of *St. Peters*, which is part of the city, must be subject to the charge as well as rest of the city. That the act of *Hen. 8.* had taken away all exemptions, and franchises, and made them all liable to be charged: that there can no reason be given for exempting the liberty of *St. Peter's*, which would not as well hold for exempting all the rest of the city, and lay the whole burden on the hundred of *Anistie*.

*Powell* agreed. And he said, that as to the persons, who of right ought to repair bridges, the act of 22 *Hen. 8.* was only declaratory of the common law; which *Holt* chief justice agreed and said, that the charge of repairing bridges was incumbent on the county by common law, unless where particular persons were charged with it by tenure or prescription. What was new in it, was the appointing the method of doing it, that a hundred might be charged with the repair of a bridge by prescription, but that was not the case here; for the hundred had not used to repair the bridge, but the west-riding of the county: that upon the annexing of this hundred, to the county of the city, there might have been an agreement made between the corporation and the dean and chapter, that they should have been exempted from the charges of repairing this bridge; but if there were any such, that ought to have been returned: that there had been no instance of the liberties contributing, because this bridge had never been repaired before.

Serjeant *Wynne* against the return said, that the latter part of it, that it was known that the county of the city ought to repair it, was ill; because it did not say, how they were obliged to repair it, by tenure or prescription; for that was what was meant by the *ought* in the act of parliament.

But then the writ was quashed, because by the act the justices of the liberty had no power to assess or rate the inhabitants of the liberty, or to intermeddle in this matter; but the justices of the county of the city. And the chief justice said, that the justices of the county of the city had power in this case, to summon the constables of the parishes within the liberty, out of the liberty; and so the justice of a county had constables within a corporation, where corporations are part of a county; for it is they must put this act in execution, and not the justices of the corporation.

There was another objection taken to the writ, that it would not lie in this case, because the money was laid out first; whereas by the act of parliament, the rate ought to have been made first, like the case of overseers of the poor on the 43 *Eliz.* and *Tawney's* case cited, where a writ of *Mandamus* to make a writ to reimburse an overseer of the poor was quashed, because the rate ought to have been made first.

The court seemed to be of opinion, that the money might be laid out, before a rate made, and that the justices of peace might make a rate to  
reimburse

reimburse the money. But then the chief justice said, that the persons that were to be charged to the repair of the bridge, ought to be made privy to the laying out of the money; and the rate to be made, ought to be for the repairing the bridge, and not for reimbursing money laid out in the repair of a bridge, and that in the case of an overseer of the poor the justices might order a rate to be made for the relief of the poor, and out of that the overseer might be reimbursed the money he had laid out, and that that was the regular way, but the rate must not be for reimbursing the overseer.

I did not, says lord *Raymond*, take this to be so certainly resolved, but the other being a plain exception, the court as I apprehended, went upon that.

The king by letters patents may enlarge the boundaries of a city. The Court of King's Bench has a concurrent jurisdiction with the sessions about repairing bridges. 1 Stran 177. East. 5 Geo. 1 Rex v. inhabitante civitatis Norwici.

Information for not repairing three public bridges called *Herford* bridges, lying within the county of the city of *Norwich*, leading from the market cross to *Ipswich*, and sets out that they are out of repair, and that it cannot be found that any person or body politic is bound by tenure or otherwise to repair them, and therefore the inhabitants of the county of the city are bound by the statute notwithstanding which they have not repaired them, but suffer them to continue in decay.

*Jacob Robins* and *Samuel Fremoult*, two of the inhabitants of the city and county of the city, come in the name of all the inhabitants of the city, and plead Not guilty. Then the record takes notice by way of suggestion, that the question is between the citizens of *Norwich* and the inhabitants of the county of *Norfolk*, and they being interested, there can be no indifferent trial had there, And *Suffolk* being the next county, the *venire* is awarded thither: And at the trial the jury find this special verdict.

That the city of *Norwich* is an ancient city, and has been time out of mind a county of itself, distinct from the county of *Norfolk*. That the three bridges were at the time of making the statute 22 H. 8. c. 5. within the county of *Norfolk*, and not within the county of the city of *Norwich*. That *Philip* and *Mary* 1 April, second of their reign, reciting the many inconveniencies which had happened by not knowing the true bounds and limits of the county of the city, severed such an extent of ground from the county of *Norfolk*, and annexed it to the city. That the three bridges are within the annexed boundaries, which are made to extend *usque ad Herford* bridge, which is the farthest of the three. That they are public bridges, and no particular person bound to repair them. That they are out of repair. But whether the inhabitants of the county of the city are bound to repair them, is the doubt of the jury, upon which they pray the advice of the court. *Et si &c.*

*Reynolds*, serjeant *pro Rege*, made three points. 1. Whether the king can make a county of a city, or enlarge the boundaries of a prescriptive city, and make the enlargements parcel of it. 2. Admitting he may, whether the enlarged part shall be considered as parcel of the old city, so as to charge them with repairing within 22 H. 8. 3. Whether in this case the farthest bridge be within the bounds of the enlargements.

1. As

1. As to the first question, there is no doubt but that the king may enlarge the boundaries of any city. Most of the cities of *England* are instances of the execution of such a power, and has been generally done by charter, which was esteemed sufficient without an act of parliament. This city of *Norwich* was so made at one time or other, for in *Bradley's Treatise of cities and boroughs* it is mentioned as a borough, and part of the county of *Norfolk*. Henry the seventh made *Chester* a county of itself, as appears by 4 *Inst.* 215. 4 *Co.* 33. a.

2. Taking it then, that the king can enlarge any city, the next question is, where the charge of repairing bridges within such enlargement lies. The statute lays no absolute charge, till the bridges are in decay, so that when the statute was made, though these bridges were within the county of *Norfolk*, yet as they were not in decay, the statute had no operation upon them, before they were annexed to the city of *Norwich*. If an hundred were to be made at this day, the statute of hue and cry would take place within it. So the prerogative of the king, in collating to a benefice void by the promotion of the incumbent to a bishoprick, extends to a new erected parish, as was resolved in Dr. *Birch's* case in *Showers*, where there are many instances of this nature.

3. The third point is, whether one of the bridges be within the annexed bounds; the words are *usque ad pontem de Harford ad exteriorem partem rivi*, and that will take it in. There is a great difference, where *usque ad* is used to terminate a way, and where it is only used as a mark or designation of any conspicuous place. *Calvin* in his *Lexicon juridicum*, says *usque ad* is sometimes *inclusionis nota*.

It is objected, that the defendants having pleaded the general issue, could give nothing in evidence, but that the bridges are in repair, and therefore that the trial should have been in *Norfolk*. To this I answer, that generally it is so, as 2 *Lev.* 112. 1 *Sid.* 140. 1 *Keb.* 498. 1 *Mod.* 112. 3 *Keb.* 301. because *prima facie* the inhabitants are chargeable, and if they would discharge themselves, they must do it by special pleading, and not upon the general issue, for the charge upon the inhabitants is a common law charge. 2 *Inst.* 701. 1 *Ven.* 256. But these defendants were not chargeable *de communi jure*, but the county of *Norfolk* was; so that they are not obliged to find out who ought to repair, as when *prima facie* the charge lies upon them. They might contest the right with the county of *Norfolk* upon the general issue (as indeed they did), and therefore it was proper to carry it into *Suffolk*, the next county. *Vaugh.* 303. 2 *Roll. Abr.* 576. *Cro. Eliz.* 664. *Godb.* 420.

*Raby contra.* This information is grounded upon the statute; now the statute gives the jurisdiction to the sessions, and where a statute prescribes a particular method, that must be followed. *Cro. Jac.* 643. 2 *Roll. Rep.* 398. 4 *Mod.* 144. 2 *Inst.* 702, 704.

2. The city and county of the city must be taken to be distinct, and if so, then the citizens only have appeared, for the appearance is *in nomine omnium inhabitantium civit' Norwic'*, and then the issue is not well joined.

3. It is a mis-trial, it should have been in *Norfolk*. That is the next county, and intirely disinterested; for the only question on this issue is,

whether the bridges be in repair, for that only can be given in evidence on Not guilty. 1 *Ven.* 256. 1 *Mod.* 112. And on the record it appears not to be a trial in the next county, for the *venire* is awarded to *Suffolk* as the next county, *Norfolk* excepted, and there the trial should have been. 1 *Inst.* 125 155. 1 *Roll. Rep.* 28. *Dy.* 279. 2 *Roll. Abr.* 596, 597.

I agree, the king may annex land to a city or county in point of jurisdiction, but not in point of charge; for as to that it still continues parcel of the old county. *Usque ad* is exclusive of one of the bridges. As if I prescribe for common *usque ad Michaelmas-day*, I have no right of common upon *Michaelmas-day*.

*Reynolds* replied. The charge to repair is at common law, and upon that this information is founded. The statute gives a concurrent, but not an exclusive jurisdiction, for here are no negative words, nor is this a new offence made by the statute, and upon those grounds it is that the cases went. As to the fault in the appearance, which was designed as a trick, the inhabitants of the city and of the county of the city are all one, for they are commensurate. It is absurd to say the jurisdiction of the county shall be abridged in point of interest, and not in point of charge. The city has the land annexed to them, *et transit cum onere*. C. J. They who are not chargeable of common right, may discharge themselves upon Not guilty. And if so, the trial was well in *Suffolk*. If they could only give reparation in evidence, then it ought to have been in *Norfolk*. There is no doubt but the information lies in this case, and as to the appearance, we may take them to be the same persons. It seems to me that the farthest bridge is included, for it extends *ad exteriorem partem rivi*. There is nothing in that notion about distinguishing between jurisdiction and charge, for certainly both must go together.

*Eyre J.* inclined, that the trial was right in *Suffolk*, upon the distinction taken by *Reynolds*. *Sed adjournatur* to be further argued. And at another day,

*Reeve pro Rege*. First exception. That no information lies in *B. R.* because the 22 *H.* 8. gives the jurisdiction to four justices. *Cro. Jac.* 643. 2 *Roll. Rep.* 398. 4 *Mod.* 144. Answer; I agree those cases, for there the statute makes a new offence, and chalks out a particular method; but this was an offence at common law, and the statute does not give an exclusive, but only a concurrent jurisdiction. Here are no negative words, though if there were, it has been held that negative words shall not take away the jurisdiction of this court. 1 *Sid.* 359. 2 *Keb.* 340. 11 *Co.* 64.

Second exception. They say this cannot be taken to be an information at common law, because it lays that the defendants *debent reparare virtute, &c.* and concludes *contra formam statuti*. Answer; Such a conclusion will not make it an information upon the statute; for nothing is here alledged, but what the common law said before; and so it has been resolved *Cro. Eliz.* 148. *Cro. Car.* 340. 2 *Roll. Abr.* 82. pl. 6. If a statute should add circumstances to a common law offence, yet the indictment need not conclude *contra formam statuti*. 1 *Ven.* 13. 1 *Sid.* 409. 2 *Keb.* 479.

Third

Third exception. The information is against the inhabitants of the county of the city, and the appearance for those of the city only. Answer. Throughout the whole record the inhabitants of the city and county of the city are taken notice of to be the same. The bounds of the city and county of the city are generally the same. 1 *Roll. Abr.* 803. *pl.* 6.

These are all the exceptions taken to the information and proceedings. I come now to the special verdict, upon which two points have been raised.

1. Whether these bridges are within the annexed boundaries, for the defendants say, that *usque* being *terminus ad quem*, and *a*, *terminus a quo*, all the bridges are excluded. There can be no dispute but that two of the bridges are included. The question turns upon the third, *usque ad pontem de Harford ad exteriorem partem rivi*. This *usque ad* is only used to shew the circumference, for the other words take in the river. Now if it be taken exclusively, then the whole breadth of the bridge all round must be excluded. Words have been taken inclusively according to the subject matter. 5 *Co.* 7, 103, 111. 6 *Co.* 62, 67. 1 *Ven.* 292. 3 *Keb.* 594. 3 *Leon.* 211. The bridges are only mentioned as notorious places.

2. They say here is a mistrial, for on Not guilty the defendants could give nothing in evidence, but that the bridges are in repair, and therefore the trial should have been in *Norfolk*. Answer; Defendants by not denying our suggestion have admitted the question to be, whether the city or county ought to repair. The cases cited of the other side are only, that the person chargeable *de communi jure* shall not give evidence, that another is bound *ratione tenuræ*, but that is not our case. If a parish be indicted for not repairing a highway, you must prove it to be a highway, that it lies within the parish, and that it is out of repair; and if there be a failure in either of these, the defendants must be acquitted. 9 *H. 6.* 62. *Bro. General issue* 52, 53, 94. 34 *H. 6.* 43. *Show.* 270.

*Brantwayte* serjeant *contra*. I shall speak only to the point of the mistrial, and upon the information.

As to the first. No admission of the parties can alter the law. It must appear to the court, that the question is of such a nature, as to draw the trial out of the proper county. 2 *Cro.* 597. *Hardr.* 311. Here the only question is, whether the city of *Norwich* is bound to repair; for they cannot throw it any where else, without special pleading. 3 *Keb.* 301. 1 *Mod.* 112. 3 *Keb.* 370. 2 *Roll. Abr.* 597. *pl.* 1.

Secondly, I agree the information would have laid as at common law, if that method had been pursued; but here they make it a statute offence, and therefore they ought to have pursued the statute remedy.

The whole court were unanimous for the king upon all the points, but the mistrial. As to which the C. J. *Powys* and *Eyre* were of opinion it was well in *Suffolk*: For the question naturally arises, whether the bridges are in *Norfolk* or *Norwich*, and the result of that is, that either the one or the other is bound to repair: And not guilty puts all in issue. There was no other way to make this appear upon record, but by suggestion; which not being denied, it is as well as if it had appeared by special pleading.

And it shall not be in the power of the defendants, to disappoint the king of a proper trial by their refusing to plead specially. *Forlescue J. contra*, thought the right ought to be tried in this issue. *Et sic adjournatur*.

The cause came now to be spoke to upon the single point of the mistrial.

*Chefkyre* serjeant *pro rege*. The defendant in this case might put us to prove, in what county these bridges lie; and then the right of repair is a consequence, wherefore the trial is right in *Suffolk*. They could not safely plead the special matter, because it will amount to the general issue, and so be demurrable. 34 *H. 6.* 28, 43. *Bro. Issue* 53. 18 *H. 6.* 21. *Fitzb. Action sur stat.* 4. 19 *H. 8.* 9. 2 *Roll. Abr.* 683. The defendants might have provided these to be private bridges on Not guilty. 1 *Ven.* 256. The resolution of the case of the *King v. Inhab. Hornsey* was contrary to the opinion of *Holt C. J.* in *Show.* 270. for *Eyre, Dolbin* and *Gregory* denied the distinction, though the reporter takes no notice of it. *Mich.* 8 *W.* 3. *Rex v. Inhab. Ireton*. The reason of this suggestion was to prevent delay, and is therefore to be favoured, since it hinders the defendant from challenging. If he confesses (as he has done here) the truth of the suggestion; then he is estopped. If he denies it, that denial is entered of record, and after that he shall never come and alledge that matter as a fault. There is no other way to come at the truth of this fact, but by putting him to confess or deny it, for it is not a matter issuable. *Tri. per pais* 140. *Plow.* 74. b. 10 *H. 6.* 54. 14 *H. 6.* 2. *Nient dedire* amounts to a confession, though it does not go on, *fore verum concedit*, as some of the entries are. This confession is as much an estoppel, as in *Salk.* 310. where an executor suffered judgment by default, and then was estopped to say he had no assets.

*Pengelly* serjeant *contra*. The matter of this suggestion does not warrant the award of the *venire* into *Suffolk*. It is not averred the county of *Norfolk* is concerned, but only by way of conclusion, *ideoque*, which is not supported by the premisses. I agree the situation might have been contested at the trial. The court might have refused this suggestion, as was done in *Delme's* case. So 2 *Roll. Abr.* 597. pl. 1. If the jury had come out of *Norfolk*, we could not have challenged the array. *Hard.* 311. Case for disturbing the plaintiff in taking the profits of a judge of the sheriffs court in *London*. On Not guilty, it was suggested, that the office was grantable by the mayor and aldermen, and prayed the *venire* to the next county. But *Hale C. J.* refused to award it, because it did not appear by necessary collection from the record, that the title of the mayor and aldermen to fill up this place would come in question. Though the situation may come in question, yet that does not determine the right; for the defendants will be acquitted without trying the right, so that is not a matter within the extent of this suggestion. Besides, this is a matter of law, whereas suggestions should be of matters of fact only. *Co. Ent.* 59, 60. 2 *Roll. Abr.* 597. pl. 8. 1 *Ven.* 58, 90. *Quo warranto* 28. *Nient dedire* alone is not a confession. *Cro. Jac.* 547. *Dy.* 367. pl. 40.

C. J. Since it is admitted, the situation may come in question; that will by way of consequence determine the other point, who ought to repair; and therefore the trial could not be in *Norfolk*. I take *Nient dedire* to be as much a confession, as *cognovit actionem*. The matter of law in the suggestion arises necessarily out of the matter of fact, and without it, would not be compleat. To which *Powys J.* agreed. *Et per Eyre J.* On Not guilty, the defendant may controvert every thing the prosecutor is bound to prove. He is bound to prove, where the bridges lie, and therefore *Norfolk* was an improper county. If a man would discharge himself upon a particular account, he must plead it specially; but not where the common right is his defence. If a man is charged to repair *ratione tenuræ*, he may throw it upon the parish by the general issue. The same suggestion was made in *Sir Richard Onslow's* case, and no exception taken. There is judgment entered in that case of *Hornsey, Pas. 2 W. & M. Ret. 31*. And in the debate, as I find in my notes, *Holt C. J.* said, the defendants might shew it not to be a highway.

*Fortescue J.* thought, parcel or not parcel, could not be given in evidence on Not guilty. For *1 Mod. 112*. *Hale C. J.* said, Not guilty goes only to the repair or not; so that as to all other questions the defendant must plead specially. And *Parker C. J.* held so, *Mich. 10 Ann.* There being three judges to one, *judicium pro rege*.

## Buggery.

**B**UGGERY (from the *Italian bugeria*,) says Lord Coke, is a detestable, and abominable sin, amongst christians not to be named, committed by carnal knowledge against the ordinance of the creator, and order of nature, by mankind with mankind, or with brute beast, or by woman kind with brute beast. *3 Inst. 58*. It was complained of in parliament (*Rot. Parl. 50 Ed. 3. N. 58*.) that the *Lombards* had brought into the realm the shameful sin of sodomy, that is not to be named, as there it is said. Our ancient authors conclude, that it deserveth death, *ultimum supplicium*, though they differ in the manner of the punishment. *Briston (ca. 9.)* saith, that sodomites and miscreants shall be burnt, and so were the sodomites by Almighty God. (*Gen. 19. 9.*) *Fleta* saith, *Pecorantes & sodomite in terra vivi confodiantur*: and therewith agreeth the *Mirror*, *pur le grand abomination*, and in another place, he saith, *sodomie est crime de majestie, vers le roy celestre*. But the judgment in all cases of felony, is that the person attainted be hanged by the neck, until he, or she be dead. But in ancient times in that case, the man was hanged, and the woman was drowned, whereof we have seen examples in the reign of *R. 1.* And this is the meaning of ancient franchises granted *de Furca, & Fossa*, of the gallows, and



and the pit, for the hanging upon the one, and drowning in the other, but *Fossa* is taken away, and *Furca* remains. 3 *Inst.* 58.

Puffend. Law  
or Nature and  
Nations, b. 2.  
c. 3. f. 3.

By the *Levitical* law not only the man or woman, guilty of bestiality, was to suffer death; but the beast was also put to death. This is not supposed to have been done because the beast had offended, but for the following reasons; that the seeing such a beast might not incite in some other person the like foul passion; that the beast should not, by remaining alive keep up the scandalous remembrance of the human offender who had suffered; and that the beast might not, as is often the case, bring forth some monster, the sight of which would be offensive and hateful to all good men. A fourth reason, and perhaps a better one than any of these, is added in a note upon the passage. This is, that the divine author of the *Levitical* law, to make mankind sensible how detestable this crime is to him, would have every thing destroyed, which had any way contributed to the commission thereof.

Id. ib.

The copulation of asses with mares, by which mules are produced, is said, by St. *Ambrose*, to be forbidden, not on the account of any guilt the beasts contract by such practices, but because men are forbidden to procure such unnatural mixture.

**Stat.** 25 *Hen.* 8. c. 6. [*A. D.* 1533. intituled] “ The punishment of the vice of buggery.”

3 *Inst.* 59.  
He that com-  
mitteth bug-  
gery with  
mankind, or  
beast, shall be  
adjudged a  
felon.  
Made perpet-  
ual 32 *H.* 8.  
c. 3. and re-  
pealed in part  
by 2 & 3 *Ed.*  
6. c. 29. and  
in the whole  
by 1 *Mar.*  
sess. 1. c. 1.  
and revived  
and made per-  
petual by  
5 *El.* c. 17.

“ Forasmuch as there is not yet sufficient and condign punishment appointed and limited by the due course of the laws of this realm, for the detestable and abominable vice of buggery committed with mankind or beast: (2) It may therefore please the king's highness, with the assent of his lords spiritual and temporal, and the commons, of this present parliament assembled, that it may be enacted by authority of the same, That the same offence be from henceforth adjudged felony, and such order and form of process therein to be used against the offenders as in cases of felony at the common law; (3) and that the offenders being thereof convicted by verdict, confession, or outlawry, shall suffer such pains of death, and losses and penalties of their goods, chattels, debts, lands, tenements and hereditaments, as felons be accustomed to do, according to the order of the common laws of this realm; (4) and that no person offending in any such offence, shall be admitted to his clergy; (5) and that justices of peace shall have power and authority, within the limits of their commissions and jurisdiction, to hear and determine the said offence, as they do use to do in cases of other felonies. (6) This act to endure till the last day of the next parliament.”

The act of 25 *Hen.* 8. hath adjudged it felony, and therefore the judgment for felony doth now belong to this offence, *viz.* to be hanged by the neck till he be dead. He that readeth the preamble of this act, will see the necessity of reading our ancient authors: the statute doth take away the benefit of clergy from the delinquent. 3 *Inst.* 59.

The words, *amongst Christians not to be named*, are in the usual indictment for this offence, and are in effect in the parliament roll of 50 Ed. 3. nu. 58. 3 Inst. 59.

The words of the indictment are, *Contra ordinationem creatoris, et naturæ ordinem, rem habuit veneream, diſſumque puerum carnaliter cognovit, &c.* So that there muſt be *penetratio*, that is, *res in re*, either with mankind, or with beaſt, but the leaſt penetration maketh it carnal knowledge. See the indictment of *Stafford*, (Co. Ent. 352.) which was drawn by great advice, for committing buggery with a boy, for which he was attainted and hanged. 3 Inst. 59.

The Sodomites, ſays lord *Coke*, came to this abomination by four means, *viz.* by pride, exceſs of diet, idleneſs, and contempt of the poor. *Otiſus nihil cogitat, niſi de ventre & venere.* Both the agent and perſon conſenting are felons: and this is conſonant to the law of God. *Lev. c. 20. v. 30. 1 Cor. c. 6. v. 10.* And this accordeth with the ancient rule of law, *Agentes & conſentientes pari pœna plectentur.* 3 Inst. 59.

*Emiſſio ſeminis* maketh it not buggery, but is an evidence in caſe of buggery of penetration: and ſo in rape the words are alſo *carnaliter cognovit*, and therefore there muſt be penetration; and *emiſſio ſeminis* without penetration maketh no rape. If the party buggered be within the age of diſcretion, it is no felony in him, but in the agent only. When any offence is felony either by the common law, or by ſtatute, all acceſſories both before and after, are incidently included. So if any be preſent, abetting and aiding any to do the act, though the offence be perſonal, and to be done by one only, as to commit rape, not only he that doth the act is a principal, but alſo they who are preſent, abetting, and aiding the miſdoer, are principals alſo, which is a proof of the other caſe of ſodomy. 3 Inst. 59.

This ſtatute extends as well to a woman, as to a man; and therefore if ſhe commit buggery with a beaſt, ſhe is a *perſon* guilty of this offence; and therefore the word *perſon* is uſed in the act. And the rather, for that ſome time before the making of this act, a great lady had committed buggery with a baboon, and had conceived by it, &c. 3 Inst. 59.

By the articles of the navy (22 Geo. 2. c. 33.) if any perſon in the fleet ſhall commit the unnatural and deteſtable ſin of buggery or ſodomy, with a man or beaſt; he ſhall be puniſhed with death by the ſentence of a court martial.

Burglary.

## Burglary.

**BURGLARY** is a felony at the common law, in breaking and entering the mansion house of another, or, as some say, the walls or gates of a walled town in the night, to the intent to commit some felony within the same, whether the felonious intent be executed or not. 1 Hawk. P. C. 101.

*In breaking*] It seems agreed, that such a breaking as is implied by law in every unlawful entry on the possession of another, whether it lie open or be inclosed, and will maintain a common indictment, or action of trespass, *quare clausum fregit*, will not satisfy the words *felonice & burglariter fregit*, except in some special cases, in which it is accompanied with such circumstances as make it as heinous as an actual breaking: and from hence it follows; that if one enter into a house by a door which he finds open, or through a hole which was made there before, and steal goods, &c. or draw any thing out of a house through a door or window which were open before; or enter into a house by the doors open in the day-time, and lie there till night, and then rob and go away, without breaking any part of the house, he is not guilty of burglary. But it is certain, that he would have been guilty thereof if he had opened the window, or unlocked the door, or broken a hole in the wall, and then had entered, &c. or if having entered by a door which he found open, or having lain in the house by the owner's consent, he had but unlatched a chamber-door; or if he had come down by the chimney: (in which case though it might be said, that the house was open there, and so not actually broken; yet it was as much inclosed as the nature of the thing would bear.) And according to some opinions, he would have been in like manner guilty, if upon an assault made by him upon the house, with an intent to rob it, the owner had opened the door in order to drive him off, and thereupon he had entered: (in which case, as some say, the opening of the door by the owner, being occasioned by the felonious attempt of the other, is as much imputable to him as if it had been actually done by his own hands.) 1 Hawk. P. C. 102.

And it has also been resolved, that where divers persons came to a house with an intent to rob it, and knocked at the door, pretending to have business with the owner, and being by that means let in, rifled the house, they were guilty of burglary. Also it hath been adjudged, that those were no less guilty, who having a design to rob a house, took lodgings in it, and then fell on the landlord and robbed him; for the law will not endure to have its justice defrauded by such evasions. And for the like reason, *à fortiori* it has been resolved, that where persons, intending to rob a house, raised a hue and cry, and prevailed with a constable to make a search in the house, and having got in by that means, with the owner's consent, bound the constable, and robbed the inhabitants, they were guilty of burglary; for there cannot be a greater affront to publick justice,

justice, than to make use of legal process as a stale for such villainous purposes; and therefore the whole act is esteemed tortious *ab initio*.  
1 *Hawk. P. C.* 102.

And lord *Hale* says the following acts amount to an actual breaking, *viz.* opening the casement, or breaking the glass window, picking open a lock of a door with a false key, or putting back the lock with a knife or dagger, unlatching the door that is only latched, to put back the leaf of a window with a dagger, to take down a pane of glass of a glass window by taking out or bending aside the nails that fasten it, is a breaking, because the glass-window is parcel of the house. 1 *Hal. H. P. C.* 552.

One of the servants in the house opened his lady's chamber door (which was fastened with a brass bolt) with design to commit a rape: and C. J. *King* ruled it to be burglary, and the defendant was convicted, and transported. 1 *Stran.* 481.  
Mich 8 G. 1.  
Rex v. Gray.

He was indicted with another person for burglary. And upon the evidence it appeared that he was a servant in the house where the robbery was committed, and in the night-time opened the street-door, and let in the other prisoner, and shewed him the side-board, from whence the other prisoner took the plate: then the defendant opened the door and let him out; but the defendant did not go out with him, but went to bed. Upon the trial before lord chief justice *Raymond*, justice *Denton* and baron *Cornmyns* at the *Old-Bailey*, it was doubted, whether this was burglary in the servant, he not going out with the other: and it being laid down in *H. P. C.* 81. *Dalt.* 317. that it is not burglary in the servant; the judges ordered it to be found specially. And afterwards at a meeting of all the judges at *Serjeants-Inn*, they were all of opinion that it was burglary in both, and not to be distinguished from the case that had been often ruled and allowed in the same page in *Hale*, that if one watches at the street end while the others go in, it is burglary in all: and upon report of this opinion the next sessions the defendant was executed. Servant lets in a thief, it is burglary  
2 *Stran.* 581.  
*Joshua Cornwall's case.*

At a meeting of the judges, says Mr. justice *Foster*, upon a special verdict in *January* 1690. they were divided upon the question, whether breaking open the door of a cupboard let into the wall of the house was burglary or no. *Hale* saith that such breaking is not burglary at common law; but thinketh it would be sufficient to bring the case within the statutes I have just cited. This distinction he groundeth on *Simpson's case*, and even saith that in that case the breaking open a chest in the house brought the case within the 39th of *Eliz.* which, I speak it with great deference, if a moveable chest be meant, cannot be law. *Simpson's case*, as truly stated by *Hale* in one part of his work, (2 *Hal.* 358.) and by *Kelyng*, (31) doth not in my opinion warrant any such distinction. It did not, nor possibly could, turn on the circumstance of breaking a chest or fixed cupboard or any thing like it; nor doth it appear from the state of the case, that there was the least occasion to resort to any such constructive breaking. For in fact, both outer and inner doors were broke open. The case, in my opinion, turned singly on this point. The man had broke open the chest and brought the goods into the hall in order to carry them off, but

was apprehended in the house. It was made a question whether this amounted to a stealing *in* the house within the 39th of *Eliz.* and it was held that it did: the man had once possessed himself of the goods *animo furandi*. This at common law, amounted to a caption and asportation, otherwise few persons who are taken in the fact, could be convicted of larceny, and this being so, the construction of the statute must be accommodated to the rules of the common law in like cases. With regard to cupboards, presses, lockers, and other fixtures of the like kind, I think we must, in favour of life, distinguish between cases relative to mere property, and such wherein life is concerned. In questions between the heir or devisee and the executor, those fixtures may with propriety enough be considered as annexed to, and parts of the freehold. The law will presume that it was the intention of the owner *under whose bounty the executor claimeth*, that they should be so considered; to the end that the house might remain to those, who, by operation of law, or by his bequest, should become intitled to it, in the same plight he put it or should leave it, entire and undefaced. But in capital cases, I am of opinion, that such fixtures which merely supply the place of chests and other ordinary utensils of household, should be considered in no other light than as mere moveables, partaking of the nature of those utensils and adapted to the same use.

*And entering*] It seems agreed, that any the least entry, either with the whole, or but with part of the body, or with any instrument, or weapon, will satisfy the word *intravit* in an indictment of burglary; as if one do but put his foot over a threshold, or his hand, or a hook, or pistol, within a window, or turn the key of a door which is locked on the inside, or discharge a loaded gun into a house, &c. Nay, it is certain, that in some cases one may be guilty of burglary, who never made any actual entry at all; as where divers come to commit a burglary together, and some stand to watch in adjacent places, and the others enter and rob, &c. for in all such cases, the act of one is in judgment of law the act of all. And upon the like ground, I can see no reason why a servant, who, confederating with a rogue, lets him in to rob a house, &c. should not be guilty of burglary as much as he; for it is clear, that if the servant were out of the house, the entry of the other would be adjudged to be his also; and what difference is there, when he is in the house? 1 *Hawk. P. C.* 103.

*Wolt. Rep.*  
107, 108.

At the *Old-Bailey* in June 1752, present Lord chief baron, Mr. justice *Foster*, and Mr. justice *Birch*, *George Gibbons* was indicted for burglary in the dwelling-house of *John Allen*. It appeared in evidence that the prisoner in the night-time cut a hole in the window shutters of the prosecutor's shop, which was part of his dwelling-house; and putting his hand thro' the hole took out watches and other things which hung in the shop within his reach: but no entry was proved otherwise than by putting his hand through the whole. This was held to be burglary and the prisoner was convicted. 3 *Inst.* 64.—*N. B.* This hath been always so held. The law requireth an entry, to complete the crime of burglary, but if  
any

any part of the body be within the house, hand or foot, this at common law is sufficient. And I conceive that such a kind of entry will be sufficient to bring the case within the statutes of *Ed. 6.* and *Eliz.* with regard to house-breaking attended with larceny in the day-time. I am likewise of opinion, says Mr. justice *Foster*, that with regard to the single point of breaking the house, whatever kind of breaking will make a man guilty of burglary at common law, will bring him within those statutes; and that no act of violence short of a common law burglary, will.

*Mansion-house*] It seems to be the current opinion at this day, that it can be only in a dwelling-house, and that the indictment for it must necessarily alledge the fact *in domo mansionali*. And Sir *Edward Coke* seems to say, that the breaking a church, &c. is therefore burglary, because the church is the mansion-house of God: but I can find nothing in the more ancient authors to countenance this nicety; for the general tenor of the old books seems to be, that burglary may be committed in breaking houses, or churches, or the walls, or gates of a town. And *Standford* and *Anderson* mention precedents of indictments of burglary *in domo*, without adding *mansionali*: however the constant course of late precedents and opinions makes it certainly a very dangerous, if not an incurable fault, to omit the word *mansionalis* in an indictment of burglary in a house; and therefore without question, it ought always to be inserted, where the truth of the case will bear it. But sure it cannot be necessary or proper to have any such word in an indictment of burglary in a church, which by all the books above cited, seems to be taken as a distinct burglary from that in a house. 1 *Hawk. P. C.* 103.

However it is agreed by all, that a house wherein a man dwells but for part of the year, or a house which one has hired to live in, and brought part of his goods into, but has not yet lodged in; or a chamber in one of the inns of court wherein a person usually lodges, or a house which a man's wife hires without his privity, and lives in by herself without him, may be called his dwelling-house; and will sufficiently satisfy the words *domus mansionalis* in the indictment, whether any person were actually therein, or not, at the time of the offence. 1 *Hawk.* 103.

Also all out-buildings, as barns, stables, dairy-houses, &c. adjoining to a house, are looked upon as part thereof, and consequently burglary may be committed in them; but if they be removed at any distance from the house, it seems that it has not been usual of late to proceed against offences therein as burglaries. 1 *Hawk.* 104.

If several persons dwell in one house as servants, guests, or tenants at will, or otherwise having no fixed and certain interest in any part thereof, and a burglary be committed in any of their apartments; it seems clear, that the indictment shall lay the offence in the mansion-house of the proprietor, &c. But if one hire a distinct apartment in a house for his lodging for a certain time, and a burglary be committed therein, I can see no good reason why the indictment may not lay the offence *in domo mansionali* of the owner of the chamber; and why may not such an apartment, with as much propriety, be called the mansion-house of him that takes

it, during the time that he has a certain interest in it? For so long as it is severed by the lease, it seems in the eye of the law to be as distinct from the other parts of the house, as if the person who rents it, had a freehold or inheritance in it. And as to the objection, that he goes into the house by the same door with the other inhabitants, and therefore is but an inmate, and the whole ought to be considered but as one house; I answer, that he must have some way to his apartment as incident to his interest in it, and that such way lying through a door which is common to him with others, doth not make the apartment itself in any respect less his own, than a way through a door belonging to himself only would have done. 1 Haw. 104.

And if the law be so in this case, it seems to me very reasonable also, that if such a lodger takes also a cellar in the said house, a burglary committed in such cellar, may be alledged *in domo mansionali* of the lodger, whether the cellar had any communication with the house or not; for since it seems to be agreed, that a barn or stable, or other out-building near to a house, shall be looked on as part thereof, why should not such a cellar have the like estimation? *Sed quere*; for *Kelynge* (83) seems to incline to a different opinion. 1 Haw. 104.

However it is agreed by all, that if one hire a part of a house to lodge in, which is actually divided from the rest, and have a door of its own to the street, a burglary therein may be alledged *in domo mansionali* of such person. 1 Haw. 104.

But if he had taken it as a shop or work-house for his use in the day-time only, it seems that a felony therein cannot be alledged in a mansion-house, not of him that lets it, because it is severed by the lease from that part of the house which belongs to him, nor of him to whom it is let, because he takes it not to lodge in. 1 Haw. 104.

From what has been said, it clearly appears, that no burglary can be committed by breaking into any ground inclosed, or booth, or tent, &c. for there seems to be no colour from any authority ancient or modern, to make any offence burglary, that is not done either against some house, or church, or the walls, or gates of some town. 1 Haw. 104.

Fost. Rep.  
76. 77.

At Newgate sessions in January 1750, John Nutbrown and Miles Nutbrown were indicted for burglary in the dwelling-house of one Mr. Fakney at Hackney, and stealing divers goods. It appeared by Mr. Fakney's evidence, that he held this house for a term of years which is not yet expired, and made use of it as a country-house in the summer, his chief residence being in London. That about the latter end of the last summer, he removed with his whole family to his house in the city, and brought away a considerable part of his goods: that in November last his house was broke open and in part rifled; upon which he removed the remainder of his household furniture, except a clock, and a few old bedsteads, and some lumber of very little value; leaving no bed or kitchen furniture, or any thing else for the accommodation of a family. Mr. Fakney being asked whether at the time he so disfurnished his house he had any intention of returning to reside there, declared that he had not come to any settled resolution

lution whether to return or not; but was rather inclined totally to quit the house, and to let it for the remainder of his term. The fact the prisoners were charged with was sufficiently proved; and was committed about midnight the first of *January* last. The court was of opinion, that the prosecutor having left his house, and disfurnished it in the manner before mentioned, without any settled resolution of returning, but rather inclining to the contrary, it could not, under these circumstances, be deemed *his dwelling-house* at the time the fact was committed. And accordingly directed the jury to acquit the prisoners of the burglary, which they did; but found them guilty of felony in stealing the clock and some other small matters. And they were ordered for transportation.—*N. B.* Where the owner quitteth the house *animo revertendi*, it may still be considered as his mansion-house, though no person be left in it; many citizens, and some lawyers, do so from a principle of good husbandry in the summer or for a long vacation. See *Pop. 42, 52. 4 Co. 40.* and *MS. Denton and Chapple*, a case upon a burglary in the house of Mr. *Nichols*, *Easter sessions 10 Will. 3.* But there must be an intention of returning, otherwise it will not be burglary.

*In the night*] There are some opinions, that burglary may be committed any time after sun-set, and before sun-rising; but it seems the much better opinion, that the word *noctanter*, which is precisely necessary in every indictment for this offence, cannot be satisfied in a legal sense, if it appear upon the evidence, that there was so much day-light at the time, that a man's countenance might be discerned thereby. *1 Haw. 101, 102.*

*To the intent to commit some felony*] It seems clear, that there can be no burglary but where the indictment both expressly alledges, and the verdict also finds, an intention to commit some felony; for if it appear that the offender meant only to commit a trespass, as to beat the party, &c. he is not guilty of burglary. However, it seems much the better opinion, that an intention to commit a rape, or such other crime which is made felony by statute, and was a trespass only at common law, will make a man guilty of burglary, as much as if such offence were a felony at common law, because where-ever a statute makes any offence felony, it incidentally gives it all the properties of a felony at common law. *1 Haw. 104, 105.*

*Stat. 24 Hen. 8. c. 5. [A. D. 1532. intituled]* “ That a man killing a thief in his defence, shall not forfeit his goods.”

“ Forasmuch as it hath been in question and ambiguity, that if any <sup>2 Inst. 56,</sup> evil disposed person or persons do attempt feloniously to rob or murder <sup>63, 220.</sup> any person or persons in or nigh any common high-way, cart-way, horse-<sup>Brañon</sup> way, or foot-way, or in their mansions, messuages, or dwelling places, or <sup>144. b.</sup> that feloniously do attempt to break any dwelling house in the night-time, <sup>1 Anders. 412</sup> should happen, in his or their being in their such felonious intent, to be slain



There shall be no forfeiture of lands or goods for the killing of any person that attempted to murder or rob.

slain by him or them whom the said evil doers should so attempt to rob or murder, or by any person or persons, being in their dwelling house, which the same evil doers should so attempt burglarily to break by night; if the said person so happening in such cases to slay any such person, so attempting to commit such murder or burglary, should for the death of the said evil-disposed person forfeit or lose his goods and chattels for the same, as any other person should do that by chance-medley should happen to kill or slay any other person in his or their defence; (2) for the declaration of the which ambiguity and doubt, Be it enacted by the king our sovereign lord, with the assent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person or persons, at any time hereafter, be indicted or appealed of or for the death of any such evil disposed person or persons, attempting to murder, rob, or burglarily to break mansion-houses, as is above said, that the person or persons so indicted or appealed thereof, and of the same by verdict so found and tried, shall not forfeit or lose any lands, tenements, goods or chattels, for the death of any such evil disposed person in such manner slain, but shall be thereof, and for the same fully acquitted and discharged, in like manner as the same person or persons should be if he or they were lawfully acquitted of the death of the said evil disposed person or persons."

**Stat. 18 Eliz. c. 7. [A. D. 1576. intituled]** "An act to take away clergy from the offenders in rape or burglary, and an order for the delivery of clerks convict without purgation."

3 Inst. 65,  
214.  
Hob. 291.

None shall have clergy that commit-  
teth rape or  
burglary.  
11 Co. 33.

"For the repressing of the most wicked and felonious rapes or ravishments of women, maids, wives and damosels, and of felonious burglaries, and for the avoiding of sundry perjuries and other abuses, in and about the purgation of clerks convict, delivered to the ordinaries, (2) Be it enacted and ordained by the authority of this present parliament, That if any person or persons shall fortune at any time after the first day of *June* next ensuing, to commit or do any manner of felonious rape, ravishment or burglary, and to be found guilty by verdict, of any such felonious rape or burglary, (3) or that any person or persons shall fortune to be outlawed for any of the offences aforesaid, (4) or upon his or their arraignment shall confess any such felonious rape or burglary, (5) That in every such case, every person and persons so being found guilty, outlawed, or confessing any of the said felonious rapes or burglaries, shall suffer pains of death, and forfeit, as in cases of felony hath been used and accustomed by the common laws of this realm, without any allowance of the privilege or benefit of clergy; any law, custom or usage heretofore had, made or used to the contrary notwithstanding.

No man allowed his clergy shall be committed to the ordinary, but pre.

**Seet. 2.** "And moreover, be it further enacted by the authority aforesaid, That every person and persons, which at any time after the end of this present session of parliament, shall be admitted and allowed to have the benefit or privilege of his or their clergy, shall not thereupon be delivered

livered to the ordinary, as hath been accustomed, but after such clergy allowed, and burning in the hand, according to the statute in that behalf provided, shall forthwith be enlarged and delivered out of prison by the justices before whom such clergy shall be granted, that cause notwithstanding.

*Sec. 3.* "Provided nevertheless, and be it also enacted by the authority aforesaid, That the justices, before whom any such allowance of clergy shall be had, shall and may, for the further correction of such persons to whom clergy shall be allowed, detain and keep them in prison for such convenient time as the same justices in their discretions shall think convenient, so as the same do not exceed one year's imprisonment; any law or usage heretofore had or used to the contrary in any wise notwithstanding."

*Sec. 4.* "And for plain declaration of law, Be it enacted, That if any person shall unlawfully and carnally know and abuse any woman-child under the age of ten years, every such unlawful and carnal knowledge shall be felony, and the offender thereof being duly convicted, shall suffer as a felon without allowance of clergy."

*Sec. 5.* "Provided always, That all and every person and persons, which shall hereafter be admitted to have the benefit of his or their clergy, shall notwithstanding his or their admission to the same, be put to answer to all other felonies whereof he or they shall be hereafter indicted or appealed, and not being thereof before acquitted, convicted, attainted or pardoned, (2) and shall in such manner and form be arraigned, tried, adjudged and suffer such execution for the same, as he or they should have done, if, as clerk or clerks convict, they had been delivered to the ordinary, and there had made his or their purgations; any thing in this act contained to the contrary notwithstanding."

**Stat. 3 Will. & Ma. c. 9. [A. D. 1691. intituled]** "An act to take away clergy from some offenders, and to bring other to punishment."

"Forasmuch as divers wicked and ill disposed persons are encouraged to commit robberies upon mens persons, and in their houses, and other offenders, by the privilege, as the law now is, of demanding the benefit of their clergy: Be it therefore enacted by the king's and queen's most excellent majesties, and by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all and every person or persons that shall, at any time from and after the first day of *March* in the year of our lord one thousand six hundred ninety-one, rob any other person, or shall feloniously take away any goods or chattel, being in any dwelling-house, the owner or any other person being therein, and put in fear, or shall rob any dwelling-house in the day time, any person being therein, or shall comfort, aid, abet, assist, counsel, hire or command any person or persons to commit any of the said offences, or to break any dwelling-house, shop, or warehouse thereunto belonging, or therewith used, in the day time, and feloniously take away any money, goods, or chattel of the value of five shillings

fently delivered. 4 H. 7. c. 13. 3 Ed. 1. c. 2. 5 Co 110. Cro. Jac. 430.

The justices may retain offenders in prison for a time. 2 Bull. 137.

To know a woman carnally, under the age of ten years, shall be felony. He that is allowed his clergy, shall answer to other felonies. 25 Ed. 3. stat. 3 & 4. c. 5. 8 El. c. 4. Dyer 214. pl. 43.

Any person convicted of robbing a dwelling-house wherein there is any or no person, &c. c. standing mute, shall lose his clergy.

shillings or upwards, therein being, although no person shall be within such dwelling-house, shop or warehouse, or shall counsel, hire or command any person to commit any burglary, being thereof convicted or attainted, or being indicted thereof shall stand mute, or will not directly answer to the indictment, or shall peremptorily challenge above the number of twenty persons returned to be of the jury, shall not have the benefit of his or their clergy."

**Stat. 10 & 11 Will. 3. c. 23.** [*A. D. 1699. intituled*] "An act for the better apprehending, prosecuting, and punishing of felons, that commit burglary, house-breaking or robbery in shops, ware-houses, coach-houses or stables, or that steal horses."

"Whereas the crimes of burglary and breaking open of houses in a felonious manner, and the crime of stealing goods privately out of shops and ware-houses, commonly called *Shop-lifting*, and the stealing of horses, are of late years much increased, to the great detriment and unspeakable loss of many of your majesty's good subjects, occasioned for want of due prosecution and punishment of offenders therein, and for want of encouragement to such as shall vigorously endeavour the apprehending of such malefactors: For preventing whereof, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all and every person and persons, that shall at any time or times, by night or in the day-time, from and after the twentieth day of *May*, which shall be in the year of our lord one thousand six hundred ninety-nine, in any shop, ware-house, coach-house or stable, privately and feloniously steal any goods, wares, or merchandizes, being of the value of five shillings, or more (although such shop, ware-house, coach-house or stable be not actually broke open by such offender or offenders, and although the owners of such goods, or any other person or persons be or be not in such shop, ware-house, coach-house or stable to be put in fear), or shall assist, hire, or command any person or persons to commit such offence, being thereof convicted or attainted by verdict or confession, or being indicted thereof shall stand mute, or will not directly answer to the indictment, or shall peremptorily challenge above the number of three and twenty persons returned to be of the jury, shall, by virtue of this act, be absolutely debarred and excluded of and from the benefit of the clergy.

Person stealing goods in any shop, ware-house, &c. of 5 s. value or more,

or assisting therein, excluded from benefit of clergy.

Prosecutor of felon to have a certificate.

**Sec. 2.** "And be it enacted by the authority aforesaid, That from and after the said twentieth day of *May* one thousand six hundred and ninety-nine, all and every person and persons, who shall apprehend and take any person guilty of any the felonies before mentioned, and prosecute him, her or them, so apprehended and taken, until he, she or they be convicted of any the aforesaid felonies, such apprehenders and takers, for his, her or their reward, upon every such conviction, without any fee or reward to be paid for the same, shall have, forthwith after every such conviction, a certificate

cate which shall be under the hand or hands of the judge, justice or justices before whom every such conviction shall be had, certifying such conviction, and also within what parish or place the felony was committed, whereof any such person or persons was or were convicted, as aforesaid, and also that such felon or felons was or were discovered and taken, or discovered or taken by the person or persons so discovering or apprehending any the said felon or felons; and in case any dispute shall happen to arise between any of the persons so discovering or apprehending any the said felon or felons, so convict as aforesaid, touching their right or title to the said certificate, that then the said judge, justice or justices, or the major part of them so respectively making such certificate as aforesaid, shall, in and by his or their certificate, direct and appoint the said certificate into so many shares, to be divided amongst the persons therein concerned, as to the said judge, justice or justices or the major part of them shall seem just and reasonable, which certificate shall and may be once assigned over and no more, and the original proprietor of such certificate, or the assignee of the same, whosoever of them shall have the interest therein, by virtue thereof and of this present act, shall and may be discharged of and from all and all manner of parish and ward offices, within the parish or ward wherein such felony or felonies shall be committed, and such party or assignee is hereby declared to be discharged therefrom; which said certificate shall be enrolled by the clerk of the peace of the county, in which the same shall be granted; for which enrollment the said clerk of the peace of the county or city, in which the same shall be granted, shall have for his fee the sum of one shilling, and no more."

In case of dispute, judge to appoint the certificate into shares. Altered by 6 Geo. 1. c. 23. s. 8. By 5 Annæ, c. 31. s. 1. Apprehenders of burglars and house-breakers have a farther reward of 40l. Certificate may be once assigned.

Assignee discharged from parish and ward offices. Certificate to be enrolled. Fee.

*Sec. 3.* " Provided nevertheless, That if any person having such certificate, shall at any time make use of the said certificate to exempt him from any parish or ward office, such person so making use of the said certificate, or any other person or persons claiming any interest therein, shall not assign over the said certificate to any person or persons whatsoever."

Proviso.

*Sec. 4.* " And be it further enacted, That in case any person or persons shall happen to be slain by any such house-breakers, horse-stealers, or other felon aforesaid, by endeavouring to apprehend, or in making pursuit after him, her or them, or any of them, that then the executors or administrators of such person or persons so slain, to whom the right of administration of the personal estate of every person so slain shall belong, shall have the said certificate, in manner as aforesaid, without fee or reward as aforesaid."

If persons be slain in pursuit of house-breakers, &c. Executor to have the certificate, without fee.

*Sec. 5.* " And be it further enacted, That if any person or persons, from and after the said twentieth day of May in the said year of our lord one thousand six hundred ninety and nine, shall commit any burglary, house-breaking or felony, in stealing of any horse or horses, or any money, wares or goods, from whom the benefit of the clergy is by this act taken away, and being out of prison, shall discover two or more person or persons, who already hath or hereafter shall commit any such burglary, horse-stealing or felony as aforesaid, and shall be convicted thereof, or cause to be discovered and apprehended two persons or more, who shall be convicted, as

House-breakers, &c. discovering two or more felons, entitled to the king's pardon,

and to be a good  
bar to appeal.

aforesaid, every such discoverer shall have, and is hereby intituled to his majesty's most gracious pardon, for the burglaries, house-breakings, horse-stealings or felonies, as aforesaid, which he, she, or they shall have committed at any time or times before such discovery made; which pardon shall be likewise a good bar to any appeal brought or to be brought for any such burglary, house-breaking, horse-stealing or felony."

Persons con-  
victed of theft  
or larceny, in-  
stead of burn-  
ing in the hand,  
to be burnt in  
the left cheek  
in open court.  
Repealed by 5  
Annæ, c. 6. s. 1.

*Stat. 6.* "And forasmuch as many evil-disposed persons might be deterred from offending, should the punishment by law to be inflicted on such persons be made more visible: Be it further enacted, That, from and after the said twentieth day of May one thousand six hundred ninety-nine, all and every person and persons who shall be convicted of or for any theft or larceny, and shall have the benefit of the clergy allowed thereupon, or ought to be burnt in the hand for such offence, instead of being burnt in the hand, shall with the usual mark wherewith such offenders, according to the laws now in force, ought to be burnt in the hand, be burnt in the most visible part of the left cheek nearest the nose, which punishment shall be inflicted in open court, in the presence of the judge, who is hereby directed and required to see the same strictly and effectually executed; any former law or statute to the contrary thereof in any wise notwithstanding."

Evidence to  
pay no fee,  
&c.

Fee for bill of  
indictment.

*Stat. 7.* "And whereas the great fees, that are often demanded and received by clerks of assize, of persons that appear as witnesses against felons, tend very much to the discouraging their conviction, to the great damage of his majesty's good subjects: To remedy the same for the future, Be it enacted, That no clerk of assize, clerk of the peace, or other person whatsoever shall demand, take or receive any fee or reward of any person whatsoever, that shall be bound by any justice of the peace to appear to give evidence against any traitor or felon, for the discharge of any recognizance for such appearance, nor shall demand or receive more than two shillings for the drawing any bill of indictment against any such felon; upon the pain of forfeiting to the person aggrieved, for every such offence, the sum of five pounds, with full costs of suit."

Clerk of assize,  
&c. drawing  
defective bill,  
to draw a new  
one gratis.  
Penalty.

*Stat. 8.* "And whereas it often happens that clerks of assize, clerks of the crown, clerks of the peace, clerks of the indictments, or other proper officers, their clerks, or deputies, do draw bills defective: Be it enacted, That if any clerk of assize, clerk of the crown, clerk of the peace, clerk of the indictments, or other proper officer, or their clerks or deputies, shall draw any bill defective, they shall draw new bills without demanding any fee or reward whatsoever, or forfeit the sum of five pounds, with full costs of suit, and that all the forfeitures aforesaid shall be recovered by him, her or them that will sue for the same, by action of debt, bill, plaint or information, in any of his majesty's courts of record, wherein no essoin, protection, or wager of law shall be allowed."

*Stat. 5 Ann. c. 31. [A. D. 1706. intituled]* "An act for encouraging the discovery and apprehending of house-breakers."

1. "Whereas the crimes of burglary and breaking open houses in a felonious manner, are of late years become more frequent than formerly, to the

the great disquiet, terror and impoverishing of many of your majesty's good subjects; which crimes might be, in great measure, prevented, if due encouragement be given to such as shall vigorously endeavour the discovery and apprehending of such malefactors, and some severe punishment inflicted on such as shall receive or buy stolen goods, and harbour and protect the said offenders: For remedy whereof, Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the tenth day of *May* one thousand seven hundred and seven, all and every person and persons who shall apprehend and take any person or persons guilty of burglary, or the felonious breaking and entering of any house in the day-time, and prosecute him, her or them so apprehended and taken, until he, she or they be convicted of such burglary and felony, shall have and receive, over and above the rewards given by one act of parliament made at *Westminster* in the tenth and eleventh years of the reign of his late majesty king *William* of glorious memory, intituled, "An act for the better apprehending, preventing and punishing of felons that commit burglary, house-breaking, or robbery in shops, warehouses, coach-houses, or stables, or that steal horses," the sum of forty pounds within one month after such conviction, to be paid by the sheriff or sheriffs of the county where such felony or burglary shall be made and done, without any fee for the same, to the person or persons so taking, apprehending and prosecuting the said offenders, he and they tendering a certificate to the said sheriff or sheriffs, under the *hand or hands* of the judges or justices before whom such felon shall be convicted for such burglary or felony, certifying the conviction of such felon for the said offence or offences, and in what parish the same was committed, and also that such felon or felons was or were taken by the person or persons claiming the said reward; and in case any dispute shall happen to arise between the persons so apprehending any the said felons, touching *their* right and title to the said reward, That then the said judge or justices, so respectively certifying as aforesaid, shall in and by their said certificate direct and appoint the said reward to be paid to and amongst the parties claiming the same, in such shares and proportions as to the said judge or justices shall seem just and reasonable; and if it shall happen that any such sheriff or sheriffs shall die or be removed before the expiration of one month after such conviction, and demand made of the said reward (not being paid as aforesaid) That then the next succeeding sheriff or sheriffs shall pay the same within one month after demand, and certificate brought as aforesaid; and if default of payment of the said sum or sums of money shall happen to be made by any sheriff or sheriffs, such sheriff or sheriffs so making default shall forfeit, to the person or persons to whom such money is due as aforesaid, double the sum or sums of money he or they ought to have paid, to be recovered by him or them, or his or their executors or administrators, in any of her majesty's courts of record at *Westminster*, by action of debt, bill, plaint or information, wherein but one imparlance, and no essoin, protection or

Apprehenders of buglars or felons, &c. to have 40 l. over and above the rewards by 10 & 11 W. 3.

c. 23.

Payable by sheriff of county.

Justices in case of dispute to direct in their certificate how reward shall be paid.

wager of law shall be allowed, with treble costs of suit by him or them expended in the recovery of the same.

*Watchman or other kill'd in pursuit of house-breaker, his executor, &c.* *entitled to the 40 l.* *by 3 Geo. 1. c. 15. sect. 4.* *Sheriffs may apply to the treasury without charging this money in their accounts.* *Sett. 2.* " And be it further enacted, That in case any watchman, or any other person or persons shall happen to be killed by any such burglar or house-breaker, endeavouring to apprehend, or in making pursuit after him or them, that then the executors or administrators, or such person or persons to whom the right of administration of the personal estate of such person so killed shall belong, upon certificate delivered under the hands and seals of the judge or justices of assize of the county where the fact was committed, or the two next justices of the peace, of such person or persons being so killed, which certificate the said *judge* or justices, upon sufficient proof before them made, are immediately required to give without fee or reward, shall receive the sum of forty pounds from the sheriff or sheriffs of the county where the said fact was done and committed; and upon failure of payment thereof by the said sheriff or sheriffs, double the sum of forty pounds to be recovered against them, with costs of suit, in manner and form as aforesaid.

*Sheriffs to deduct monies so paid on their accounts,* *and be repaid by lord treasurer.* *Sett. 3.* " And it is hereby further enacted, That all sheriffs, their executors and administrators, upon producing such respective certificates, and the receipts for the money paid by them, in pursuance of this act, shall be allowed, and are hereby impowered to deduct, upon their accounts, all monies, other than double the sum or sums of money, and treble costs of suit, which they shall disburse as aforesaid; and that if, upon account of any sheriff or sheriffs, there shall not be money sufficient in the hands of such sheriff or sheriffs to reimburse him or them such monies paid by him or them by virtue of this act, that then the sheriff or sheriffs having so paid the monies shall have the same repaid by the lord treasurer, or commissioners of her majesty's treasury for the time being, out of the revenue of the crown, upon certificate from the clerk of the pipe to that effect.

*Felon, &c. discovering two or more felons, shall on conviction be entitled to reward,* *and be pardoned.* *Sett. 4.* " And be it further enacted, That if any person or persons, being out of prison, shall from and after the said tenth day of *May* commit any burglary or felony as aforesaid, and afterwards discover two or more persons who already have, or hereafter shall commit any such burglaries or felonies, so as two or more of the persons discovered shall be convicted of such burglary or felony, any such discoverer shall himself have the like reward and allowance of forty pounds hereby promised to be paid to the person or persons who shall apprehend and convict house-breakers, and all other advantages given to such taker and prosecutor, and shall also be himself entitled to the gracious pardon of her majesty, her heirs and successors, for all burglaries, robberies and felonies (except murder and treason) by him committed at any time or times before such discovery made, which pardon shall be likewise a good bar to any appeal brought for such burglary, robbery or felony.

*Buyers or receivers of stolen goods, &c. made accessories, &c.* *Sett. 5.* " And forasmuch as the said felons are much encouraged to commit such burglaries and felonies, because a great number of persons make it a trade to receive and buy of the said felons the goods so by them

them feloniously taken, and also do make it their business to harbour and conceal the said offenders after the said facts, knowing the said felonies and burglaries to have been by them committed: Be it therefore enacted by the authority aforesaid, That if any person or persons shall receive or buy any goods or chattels that shall be feloniously taken or stolen from any other person, knowing the same to be stolen, or shall receive, harbour or conceal any burglars, felons or thieves, knowing them to be so, shall be taken and received as accessary or accessaries to the said felony or felonies; and being of either of the said offences legally convicted, by the testimony of one or more credible witnesses, shall suffer and incur the pains of death as a felon convict.

*Stat. 6.* " Provided always, That if any such principal felon cannot be taken, so as to be prosecuted and convicted for any such offence, yet nevertheless it shall and may be lawful to prosecute and punish every such person and persons buying or receiving any goods stolen, by any such principal felon, knowing the same to be stolen, as for a misdemeanor, to be punished by fine and imprisonment, or other such corporal punishment as the court shall think fit to inflict, although the principal felon be not before convict of the said felony, which shall exempt the offender from being punished as accessary, if such principal felon shall be afterwards taken and convicted.

*Stat. 7.* " Provided always, and be it enacted by the authority aforesaid, That the judge, justice or justices (before whom such felons and house-breakers shall be convicted, as aforesaid) shall determine and settle the right, rights and shares of such respective persons, who by virtue of this act shall be entitled to the certificate herein directed to be given, and shall also (being thereunto required) make out and deliver, or cause to be made out and delivered the said certificate without fee or reward to such person or persons entitled thereunto, before the end of such assizes or sessions wherein such conviction, as aforesaid, shall be had."

*Stat. 3 Geo. 1. c. 15. [A. D. 1716. intituled]* " An act for the better regulating the office of sheriffs, and for ascertaining their fees, and the fees for suing out their patents, and passing their accounts."

*Stat. 4.* " And whereas by virtue of an act made in the fourth and fifth years of the reign of their late majesties king *William* and queen *Mary*, for encouraging the apprehending of highway-men; and of one other act made in the sixth and seventh years of his said late majesty king *William* the third, to prevent counterfeiting and clipping the coin of this kingdom; and of one other act made in the fifth year of her late majesty queen *Anne*, for encouraging the apprehending of house breakers, the respective sheriffs of *England* and *Wales* are obliged to pay the several rewards of forty pounds, as in those acts is directed, upon the convictions of highwaymen, clippers, coiners, or house-breakers, to such person or persons who shall bring to such sheriff a certificate under the hand of the judge or justices before whom such offenders were convicted, directing payment

If principal felon cannot be taken, accessary to be try'd as for a misdemeanor.

Judges, &c. to settle the right and shares of persons to the certificate, &c.

4 & 5 W. & M. c. 8.

6 & 7 W. 3. c. 17.

5 Annæ, c. 31.



After 9 July 1717, sheriff not obliged to charge money for apprehending highway men, or for preventing the counterfeiting, &c. of the coin, or for apprehending house-breakers; but may on the judge's certificate of the conviction and receipt of the party entitled to the reward, apply to the lord treasurer, &c.

who shall pay him the sums disbursed, without fee.

payment thereof, under the penalty of forfeiting to the party entitled thereunto double the sum so certified, with treble costs of suit; which said reward of forty pounds being so paid, as aforesaid, is by the said several acts ordered to be allowed to such sheriff upon his account; and if there should not be remaining in the hands of such sheriff monies sufficient for that purpose, that in such case the surplussage occasioned thereby should be repaid to such sheriff by the lord high treasurer, or the commissioners of the treasury for the time being, out of the revenue of the crown, upon certificate thereof from the clerk of the pipe, or by the auditor of *Wales*, as by the said respective acts may more at large appear: And whereas since the making of the said acts it hath been found, that many sheriffs have been put under great difficulties and inconveniencies thereby, not only by reason of paying down great sums of money for the rewards aforesaid, before the publick revenue writ out to them in process could be levied or collected by them, but also by reason that such sheriff cannot have a certificate of his surplussage from the clerk of the pipe, or the auditor of *Wales*, until he hath fully finished his account, and be dismissed the court; by which means the sheriff is kept a long time out of his money so disbursed for the rewards aforesaid: Be it therefore enacted by the authority aforesaid, That no sheriff shall be obliged to bring or charge in his accounts any sum or sums of money to be paid for the rewards above-mentioned, or any of them, from and after the ninth-day of July one thousand seven hundred and seventeen, but shall and may immediately apply for the same to the lord high treasurer of *Great Britain*, or commissioners of the treasury for the time being, who, upon inspecting a due certificate of the conviction of such offender or offenders, for which such reward shall be ordered to be paid, as aforesaid, by virtue of the said acts, or any of them, together with the receipts or acquittances of the parties entitled to receive the same, shall forthwith repay to such sheriff or sheriffs respectively, all such monies so disbursed and paid, as aforesaid, without any fee or reward whatsoever; any thing in the aforesaid acts, or any of them, contained to the contrary thereof in any wise notwithstanding."

**Stat. 6 Geo. 1. c. 23.** [*A. D. 1719. intituled*] "An act for the further preventing robbery, burglary, and other felonies, and for the more effectual transportation of felons."

**Sec. 10.** "And be it further declared by the authority aforesaid, That the reward of forty pounds for the apprehending and convicting any person or persons for burglary, shall be paid without any deduction, as aforesaid, for every offender who shall be apprehended and convicted for the said crime."

**Stat.**

**Stat. 25 Geo. 2. c. 36.** [*A. D. 1752.*] *Made, among other purposes,* “for the better preventing thefts and robberies.”

**SECT. 11.** “And whereas many persons are deterred from prosecuting persons guilty of felony, upon account of the expence attending such prosecutions, which is another great cause and encouragement of thefts and robberies; In order therefore to encourage the bringing offenders to justice, Be it enacted by the authority aforesaid, That it shall and may be in the power of the court, before whom any person has been tried and convicted of any grand or petit larceny, or other felony, at the prayer of the prosecutor, and on consideration of his circumstances, to order the treasurer of the county in which the offence shall have been committed, to pay unto such prosecutor such sum of money as to the said court shall seem reasonable, not exceeding the expences which it shall appear to the court the prosecutor was put unto in carrying on such prosecution, making him a reasonable allowance for his time and trouble therein; which order the clerk of assize, or clerk of the peace respectively, is hereby directed and required forthwith to make out and to deliver unto such prosecutor, upon being paid for the same the sum of one shilling, and no more; and the treasurer of the county is hereby authorized and required, upon sight of such order, forthwith to pay to such prosecutor, or other person authorized to receive the same, such sum of money as aforesaid, and shall be allowed the same in his accounts.”

*In prosecutions for felony; court may make orders for payment of the prosecutor's expences; Clerk's fee for such order. County treasurer to pay the order.*

**Stat. 27 Geo. 2. c. 3.** [*A. D. 1754.*] *Made, among other purposes,* “for allowing the charges of poor persons bound to give evidence against felons.”

**SECT. 3.** “And whereas the expence, as well as loss of time in attending courts of justice, is a discouragement to the poorer sort to appear as witnesses against offenders, who thereby escape the publick justice, and the punishment due to their crimes; Be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of June, when any poor person shall appear on recognizance in any court to give evidence against another accused of any grand or petit larceny, or other felony, it shall and may be in the power of the court, at the prayer and on the oath of such person, and on consideration of his circumstances, in open court to order the treasurer of the county or place in which the offence shall have been committed, to pay unto such person such sum of money, as to the said court shall seem reasonable for his time, trouble and expence; which order the proper officer of such court is hereby directed and required to make out, and to deliver unto such person, upon being paid for the same the sum of six pence, and no more; and such treasurer is hereby authorized and required, upon delivery of such order, forthwith to pay to such person, or other person authorized to receive the same, such sum of money as aforesaid, and shall be allowed the same in his accounts.”

*The charges of attendance to be allowed by the court to poor persons bound to give evidence against felons. 6d. to be paid to the officer for making out the order.*

In *Middlesex* the overseers of the poor of the parish where the offender was taken, to pay all such charges.

*Stat. 4.* " Provided always, and it is hereby declared and enacted by the authority aforesaid, That nothing in this act contained shall extend to empower such court, or any justice or justices of the peace, to make warrants or orders on the treasurer of the county of *Middlesex* for the payment of the expences of the constable or other officer in conveying any person to gaol, or for the payment of any person for his time, trouble and expence, who shall appear on his recognizance to give evidence as aforesaid; but that within the said county of *Middlesex* the expences of the constable or other officer, occasioned by his conveying of any person to gaol by virtue of a warrant from any justice or justices of the peace, shall (after such expences have been examined into upon oath, and allowed by such justice or justices, and for which no fee or reward shall be taken) be paid by the overseer or overseers of the poor of the parish or place where the said person was apprehended, who is and are hereby authorized and required to pay the same; and the sum or sums so paid shall be allowed in his or their accounts."

Certificate of having apprehended, prosecuted and convicted a felon, under 10 & 11 Will. 3 c. 23. sect. 2. (See p. 448) is assignable over, once and no more; provided it has not been used before: it exempts from all *parishes* and *ward* offices within the parish or ward wherein the felony was committed; but will not serve to exempt the constable of a *manor*, which comprehends the *whole* town and parish where the felony was committed, and more. 2 Bur. Rep.

This was a case from *Warwickshire* assizes. The defendant was originally indicted at the quarter-sessions holden at *Warwick* on the 4th of *April* 1758, for refusing to take upon himself the office of constable of and for the *manor* of *Birmingham*, having been duly nominated and elected thereto. And the indictment set forth, that at a court-leet holden on the 18th of *October* 31 G. 2. in and for the *manor* of *Birmingham*, the defendant, according to the custom of the same manor, was duly nominated and elected by the jury, One of the constables of the said *manor* of *Birmingham* for the year then next ensuing: he then being an inhabitant and resident of and within the said manor, and being a fit person so to be nominated and elected to the said office. That the defendant had notice, &c. That the steward certified his appointment to a justice of peace; by whom he was summoned to appear on, &c. at, &c. to take the oath of office as constable nominated and elected of and for the said *manor* of *Birmingham* as aforesaid. That although he personally appeared according to the summons, and was then and there required by the said justice to take the said oath of office of constable of and for the said *manor* of *Birmingham* according to the nomination and election aforesaid, he unlawfully, wilfully and contumaciously did neglect and refuse to take it, and to be duly sworn into the said office, and to take it upon him. There was a second count in the indictment, alledging that he was personally present in court at the leet, and being required by the steward to be sworn and take the office upon him, neglected and refused, &c. This indictment being removed hither by *certiorari*, the defendant pleaded "Not guilty:" and the cause was tried at *Warwick* summer-assizes in *August* 1759, before lord chief baron *Parker*. It appeared upon the evidence, that the facts laid in the indictment were true; and that the defendant was a fit person to be nominated and elected as aforesaid; and liable to serve the said office of constable, UNLESS discharged or exempt therefrom by reason of the certificate and assignment thereof herein after mentioned: also, that the usage at *Birmingham* has been, "annually at the court-leet there, to elect two constables

constables for the manor of *Birmingham generally*, and one constable for the hamlet of *Deritend* (a distinct vill within the said manor) particularly." 1132. Trin. 1 Geo. 3. Rex v. Darbyshire.  
That the manor of *Birmingham* extends itself into and comprehends the whole town and parish of *Birmingham*, and also the said hamlet of *Deritend*. That the constables so elected for the said manor of *Birmingham generally*, have jurisdiction and authority, as constables, not only throughout the said town and parish of *Birmingham*, but ALSO within and throughout the said hamlet of *Deritend*. That the constable of *Deritend* is elected out of the inhabitants of *Deritend* only: and the constable so elected for *Deritend* particularly, and the said constable so elected for the said manor of *Birmingham* have severally equal and concurrent jurisdiction within the said hamlet of *Deritend*. That the defendant had a CERTIFICATE according to the statute of 10 & 11 W. 3. c. 23. discharging one *Plowden Jennett* from all parish offices within the parish of *Birmingham*; and an assignment thereof signed and executed on the several and respective days of the dates thereof respectively. And the same was duly inrolled according to the statute; and had not been before assigned.

Upon this case, the question reserved for the opinion of his majesty's court of *King's Bench*, is, Whether the said *John Darbyshire*, upon the circumstances of this case, is, notwithstanding the certificate, guilty of the indictment, or Not guilty. Mr. serjeant *Hewitt* for the king, argued that he is not exempted from serving this office herein described. The discharge is (by the act) from all "PARISH and WARD offices," within the parish or ward wherein the felony was committed. But the limits of this man's office extend BEYOND the parish of *Birmingham*: therefore this is not a PARISH office. And there is no such division in this place, as a ward: therefore no WARD officer. But a CONSTABLE is not a parish officer at all. It was a common-law office, before parishes existed. Constables were, by common law, conservators of the peace. "The office is as ancient as turns or leets;" 4 Inst. 265. Therefore more ancient than parishes. A parish is not a common-law division; but an ecclesiastical one: and so it was asserted in *Freeman's Rep.* 228. in the case of *Adefon v. Sir John Otway*, by Mr. justice *Atkins*. And in *Mich. 10 W. 3* an appointment of a constable was quashed, because it was not alledged in the order, "that he was an inhabitant of the liberty," but only "of the parish." *Cases Temp. W. 3.* 256. *Anonymous*. Here, this man is appointed constable in and for the MANOR of *Birmingham*. The office of constable is always annexed to a vill, not to a parish. But the felony, in this case, was committed in the parish of *Birmingham*, not in the vill of *Deritend*.

Mr. *Caldecott*, for the defendant.—He is at least a PARISH-officer, (whatever more he may be;) because his office extends throughout the whole parish of *Birmingham*: and he is an inhabitant of the parish of *Birmingham*. Therefore, though he be also constable of the MANOR which includes the parish; yet he is certainly a parish officer, notwithstanding that greater extent of his jurisdiction or power. This act is to be construed favourably. And it has been determined on 3 & 4 W. & M. c. 11. "That serving the office of constable for a city at large, (though he was  
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appointed by the corporation, and exercised it throughout the whole city,) gained a settlement in the parish where he inhabited." 2 *Strange* 1014. *Between the parishes of St. Maurice and St. Mary Calendar in Winchester.* P. 29 G. 2. B. R. *Rex v. Davis*, collector of the rates and duties of the highways of the parish of St. Leonard Shoreditch, who was appointed by the trustees under the act of parliament, and not chosen by the parish: yet it was holden to be a parish-office; and "That this act ought to receive the most liberal construction." In the liberty of *Westminster*, the constables are chosen by the burgesses for the liberty of *Westminster*, and act throughout the whole liberty: yet they always enjoy the benefit of these certificates. This case is executing an office in the parish where the man lives; and is certainly within the intention of the legislature. For the act of parliament directs the judge to certify in what parish or place the felony was committed.

Mr. ferjeant *Hewitt*, in reply—The reward is only a discharge from parish and ward offices; and from no others. As to 2 *Strange* 1014.—It depends upon the words of the act of parliament of 9 & 10 W. 3. c. 11. which only requires executing a publick annual office, within the parish: It does not at all speak of parish-offices; nor is confined to them, as this is. As to the case of *Rex v. Davis*—The man was chosen by trustees, under an act of parliament for repairing the highways of that parish, collector of such highway rates within the parish: so that that was strictly and properly a parish office. In *Westminster*, I believe, the constables are appointed for a particular parish, not for the liberty in general. The present case, most manifestly, is not confined to the parish where the felony was committed: which, by the act, it ought to be; for it is clear that the act does not mean to extend it further than that limit.

Lord *Mansfield*.—The only question upon this case is, "Whether the constable of the manor of *Birmingham* is a parish-officer of the parish of *Birmingham*? This term "parish-officer," does not include every office exercised in the parish: if it did, it might even take in the office of high-sheriff of the county. A parish-officer is relative to the parish, and confined to the parish only. A constable of a parish may be called a parish-officer: but this man has a much larger jurisdiction than the parish only: for he has a jurisdiction over the whole manor, which extends much beyond the parish; and the parish is only a part of that district over which it is to be exercised. And the act does not intend the certificate to be a discharge from an office, whereof the functions are to be exercised out of the limits of the parish. This man cannot be esteemed a parish-officer, either from the origin of his office, or the nature, or the exercise of it.

Mr. justice *Denison*.—If it had been stated "that the manor of *Birmingham* and parish of *Birmingham* were co-extensive, this certificate might have been a sufficient discharge. But this is stated quite otherwise, namely, "That the jurisdiction of the constables elected for the manor generally, extends not only throughout the town and parish, but also within and throughout the hamlet of *Deritend*." The act only meant to excuse the pro-

proprietor of the certificate, from serving parish and ward offices *within* the parish or ward where the felony was committed; and not from offices to be exercised *out* of the parish or ward. If so, this is *not* an office within the words or meaning of the act of parliament, upon this state of the case now before us: for this is not an office of constable in and for the *parish*; but in and for the *manor*, which is *more extensive* than the parish is; and a different species of division too, one being ecclesiastical, the other civil.

Mr. justice *Wilmut* — The act of parliament means these certificates to be exemptions from such offices only, the functions of which are *confined within* that sort of division which is now called a *parish*; which is not a civil, but an \* ecclesiastical division. No such species of division was known at \* common law: the temporal or civil division was into *vills*, not into parishes. And this office now under our consideration, as the case is stated, could be only a *partial* exercise of the functions of this office, *within the parish of Birmingham*: for he could only exercise within the parish of Birmingham, the functions of *such part* of the jurisdiction as the *limits of the parish extended to*; but *not* those of the *rest* of his jurisdiction which lay *beyond* the limits of it. Consequently, the exemption he could pretend to claim under this certificate could be, as this case is stated, *only partial*: but it would be *absurd* to construe the act to *exempt* him from serving the same identical office within the *parish*, and yet leave him *liable* to serve it in the *vill*. Mr. *Caldecot's* case cited from 2 *Strange* is very strong for the present opinion of the court. That case was upon the certificate act of 9 & 10 *W. 3. c. 11*. The question was “Whether executing the office of constable for the city at large gave a certificate-man a settlement in the parish wherein he inhabited and exercised it:” and it was holden “That he did acquire a settlement thereby.” But it was *not* treated as a *parochial* office; it was enough that it was an *annual* office *exercised within* the parish; which was sufficient to bring it within *that* act of parliament, though it was not a *parochial* office. And as to the case of *Davis* the collector of the highway-rates of *St. Leonard's* — It turned singly upon an act of parliament peculiar to that parish. That of *St. Maurice* in *Winchester* was indeed about an office in the *city in general*; and this is an office in the *manor in general*: but the question did not there turn upon its being a *parochial* office, or not; it being sufficient that it was an *annual* one. *Per cur.* unanimously, Let the *posse* be delivered to the prosecutor; and let judgment be entered for the King.

\* V. Freeman's Rep. 228. *per Atkins*, accord.

## Burning.

**BURNING**, says lord *Coke*, is a felony at the common law, committed by any that maliciously and voluntarily, in the night or day, burneth the house of another. 3 *Inst.* 66.

*Burning*] It seems to be clearly agreed, that neither a bare intention to burn a house, nor even an actual attempt to do it by putting a fire to part of a house, will amount to felony, if no part of it be burnt, for the indictment must have the words *incendit & combussit*: but it is certain, that if any part of the house be burnt, the offender is guilty of felony, notwithstanding the fire afterwards be put out, or go out of itself. 1 *Hawk.* P. C. 106.

*Maliciously and voluntarily*] It seems clear, that if the fire happened through negligence or mischance, it cannot make him, who is the unfortunate cause of it, guilty of this felony; for the indictment must alledge the offence to have been done *voluntariè ex malitiâ præcogitatâ & felonice*. Yet if one maliciously intending only to burn the house of *A.* happen thereby to burn the house of *B.* it is certain that he may be indicted as having maliciously burned the house of *B.* for where a felonious design against one man misses its aim, and takes effect upon another, it shall have the like construction as if it had been levelled against him who suffers by it. 1 *Hawk.* 66.

*The house*] It seems agreed, that not only a mansion-house, and the principal parts thereof, but also any other house, and the out-buildings, as barns, and stables, adjoining thereto; and also barns full of corn, whether they be adjoining to any house or not, are so far secured by law, that the malicious burning of them is felony at the common law. 1 *Hawk.* 105.

*Of another*] It seems clearly agreed, that one seized in fee, or but possessed for years, of a house standing by itself at a distance from all others, cannot commit felony in burning the same: also it seems the much stronger opinion, that a man so seized or possessed of a house in a town; who burns his own with an intent to burn his neighbours, but in the event burns his own only, is not guilty of arson; for by the general tenor of the books speaking of this offence, it seems to be supposed to be done in the house of another, and not of the offender; neither shall any act, which is only a crime in respect of the injury which it does, or may do, to another, be made a felony by reason of an intention thereby to commit a felony, if such intention be not executed: however this is certainly an offence highly punishable, in regard of the malice thereof, and the great danger to the publick which attends it, and the offender may be severely fined and imprisoned, during the king's pleasure, and set on the

the pillory, and bound to his good behaviour during life. 1 *Hawk.* 105, 106.

An infant of about fourteen years of age or under may be guilty of malicious burning of houses, if by circumstances it can appear he knew it to be evil. 1 *Hale's Hist. P. C.* 569.

Before me, says lord *Hale*, at *Norfolk* a boy about the age of fourteen years was arraigned upon two several indictments for malicious and wilful burning of two several houses; the first was his own father's; and it appeared, that when he had secretly carried fire into the barn and fired it, he falsely charged another with the fact, and upon the boy's accusation he was imprisoned, till it appeared clearly he was not the offender: this boy was afterwards together with his father and his other children entertained at a neighbour's house in charity, and the boy watching opportunity, when none were in the house but a child in the cradle, carried fire out of the kitchen into a room of furzes, and set fire in it and went out; and thus burnt a second house, and the child in the cradle; for both these he was questioned, and at length confessed freely the whole circumstances of both facts; he was indicted, and upon his arraignment pleaded, and upon his trial craftily insisted, that he was under fourteen years of age; but I directed the jury, that it appeared by the circumstances, that his malice supplied his age, for it appeared, that he understood the evil of the first offence when he did it so secretly, and yet charged another wrongfully; but if there had been any doubt of the first burning, yet he could not but be confusant, that the second burning was a great crime, when he saw another, formerly charged by him with the first burning, committed for felony; but yet for my farther satisfaction, and in respect the boy seemed very little, I took farther examination touching his age, and his father being by, freely confessed and was content to swear, that he was above fourteen and near fifteen years of age, and he was convicted and executed. 1 *Hale's Hist. P. C.* 569, 570.

*William Holmes* was indicted in *London*, for that he in *April 7 Caroli*, being possessed of an house in *London* in *Throgmorton-street*, in such a ward for six years, remainder to *Job. S.* for three years, the reversion to the corporation of *Haberdashers* in fee; he *vi et armis*, 3 APRIL. SEPTIMO *Caroli*, the said house felonice, voluntarie et malitiose, igne combussit, ea intentione ad eandem domum mansionalem, nec non diversas alias domus mansionales diversorum ligeorum domini regis adtunc et ibidem situat. et existent. ad dictam domum mansionalem dicti WILLIELMI HOLMES contigue adjacent', adtunc et ibidem felonice, voluntarie, et malitiose totaliter comburend' et igne consumend' contra pacem. And upon this being arraigned at *Newgate*, he was found guilty: And before judgment this indictment was removed by *certiorari* into this court. And it was argued at the bar by *Grimston*, that it was not felony. And now this term at the bench, and by *Richardson*, chief justice *Jones*, and *Berkeley*, it was held, that it was not felony to burn an house whereof he is in possession, by virtue of a lease for years: for they said, that burning of houses is not felony unless that they were *edes alienae*. And therefore *Britten fol.* 16. et *Bracton fol.* 146. et 27 *Ass.* 44. mentions; that it is felony.



felony to burn the house of another, and 10 Ed. 4. 14. 3 H. 7. 10. et 10 H. 7. 1. et Cok. lib. 11. fol. 29. *Poulter's case*, which say, that burning of houses generally is felony, are to be intended *de ædibus alienis, et non propriis*. And although the indictment be *ea intentione ad comburendum felonice, voluntarie, et malitiose*, the houses of divers others *contigüe adjacentes*, yet intent only without fact, is not felony. Also *Berkeley* and *Jones* held, that it cannot be said to be *vi et armis*, when it is in his own possession. Also *Jenes* said, that he could not be well indicted of felony, because none of their names are mentioned who be the owners of the houses adjoining. But to that objection *Berkeley* and *Richardson* agreed not. But I argued that the burning in the indictment mentioned, is felony, because it is *capitale crimen, felleo animo perpetratum*, which is the definition of felony in Cok. Lit. 39. Also by the rule in *Bracton* 146. *Quod incendium nequiter, et ob inimicitias, capitali pena puniatur; si vero sit incendium fortuito vel per negligentiam, et non mala conscientia, non sic puniatur, sed versus eum criminaliter agatur*. And it cannot be said to be negligence in another's house, wherefore it is to be intended in his own house. Also the burning is found to be *malitiose*, so it is *mala conscientia et nequiter factum*. Also this burning of his house in a street of the city, adjoining to the houses of others, is to the endangering of the city, and therefore ought to be construed to be felony; but so peradventure is not the burning of his house in the fields. And whereas it was said, that the intention cannot make a felony, it was answered, that the intention here is coupled with an act of burning, and with the intendment of an act, which is felony, as 5 H. 7. 18. 7 H. 7. 42. 13 Ed. 4. 9. Where a man delivers goods to one, and afterwards he that delivered them, privately steals them, to the intent to charge him, &c. it is felony. And whereas it was objected, that being his own possession, it cannot be said *vi et armis*: I answered, that *vi et armis* is well enough, where there is a malefiance, as it is in an action upon the case. vide Co. lib. 9. fol. 50. Also every indictment is *vi et armis et contra pacem*, where an act is done against the commonwealth. So it is where a servant runs away with goods committed to his trust above forty shillings, although properly it cannot be said to be *vi et armis*, because they were in his custody. And in this case the ill consequence, which might have fallen out by this act, makes the offence the greater; and the books in 10 Ed. 4. 14. 3 H. 7. 10. 11 H. 7. 1. & *Standford* 6. Co. 11. 29. Co. 4. 20. put the case of burning of houses generally, and not of the burning of other men's houses. And it is an equal mischief in a commonwealth, to burn his own in a city or vill, as to burn the houses of others, for the danger which may ensue. But the other three justices resolved *ut supra*, that it was not felony, wherefore he was discharged thereof. But because it was an exorbitant offence, and found, they ordered, that he should be fined 500 l. to the king, and imprisoned during the king's pleasure, and should stand upon the pillory with a paper upon his head, signifying the offence, at *Westminster* and at *Cheapside*, upon the market day, and in the place where he committed the offence, and should be bound with good sureties to his good behaviour during life.

At *Aylesbury*, Lent assizes 1735, before Mr. justice *Denison*, *Elizabeth Harris*, a girl of fourteen years of age and of sufficient understanding for her years, was indicted for maliciously setting fire to and burning a dwelling house in the possession of *Edward Stokes*. And *Anne* the wife of *William Course* was indicted as an accessory to the felony before the fact. The prisoner *Elizabeth* was the daughter of the prisoner *Anne* by the former husband, *John Harris*. It appeared in evidence at the trial, that *John Harris* died seized of the equity of redemption of his house and of another adjoining to it, subject to a mortgage term for 20 l. And that the equity descended to his eldest son, a child left with other children under the care of their mother the prisoner *Anne*; who was intitled to dower out of these houses, but no dower was ever assigned. That *Anne* having the care of her son and his estate, let these houses to *Edward Stokes* at the rent of 5 l. a year, and received the rent for some time. But having a large family of children, she was obliged to ask relief of the parish where she lived. That she was denied such relief on account of these houses; the parishioners insisting that the overseers of the poor should be let into the receipt of the rent, before she should be intitled to any parochial relief. That thereupon she frequently declared she would set the housing on fire if the parish did not relieve her; that she had young children whom the parish could not punish, though they might punish her, and she would order the least child she had who could carry a coal of fire, to burn the housing down. And many other declarations of the like kind she made, which discovered an obstinate resolution in her to burn the houses, rather than submit to the terms the parishioners insisted on. It appeared farther, that the prisoner *Elizabeth* set the house on fire by the direction of the prisoner *Anne*, who went from home on purpose at the time the fact was committed, and that no other house was burnt. The jury found both the prisoners guilty. But a doubt arising by reason of the interest the prisoner *Anne* had in the house, Mr. justice *Denison* thought proper to respite judgment, in order to take the opinion of the judges on the case. July the 2d. 1753. At a meeting of the judges at the chief justice's chambers it was unanimously agreed, that both the prisoners are guilty of felony. The only doubt was with regard to the interest the prisoner *Anne* had in the house, and it was grounded on the reasoning in *Holmes's* case; for had she had such estate in the house as would have cleared her of the charge of felony, the prisoner *Elizabeth*, who acted by her directions, could not have been guilty of felony. But all the judges agreed, that the prisoner *Anne's* title to dower was not such an interest as could bring her within the rule in *Holmes's* case. *Holmes* had the possession by legal title, and during the continuance of his lease could maintain his possession against all mankind; and therefore the house might in a limited sense be called his own. But in the present case the possession was in *Edward Stokes* under a demise from *Anne* in behalf of her son, and subject to a yearly rent which she received. And her title to dower, had *Edward Stokes's* interest been out of the case, did not so much as give her a right of entry, it being a bare right of action. Mr. justice *Denison* said that he had no doubt upon him from the beginning. But it being a new case,

Post. Rep.  
113. At Lent  
assizes 1753.  
Case of Eliza-  
beth Harris.

case, and some of the bar being doubtful, he thought it adviseable to take the opinion of the judges. At the next assizes judgment of death was pronounced upon both the prisoners, and *Anne* was executed; but *Elizabeth* being young, and acting under her mother's direction, was reprieved, and recommended to mercy on condition of transportation. It was said in the debate of this case by some of the judges, and not denied by any, that had *Anne* been seized of the freehold and inheritance of the house, and *Stokes* in possession under a lease, it would have been felony in *Anne* to have burnt it: otherwise all tenants and their concerns would be very much at the mercy of their landlords. The principle three of the judges went upon in *Holmes's* case, (for *Croke* did not concur in the judgment) doth seem to warrant this opinion. They considered the house then under consideration as the property of *Holmes*, as *his own house*, by reason of the estate he had in it under his lease. *Croke* did not dispute the principle, but argued against the conclusion the other judges drew from it. And if this be so, I do not see why it may not with strict legal propriety be said of a reversioner, who should maliciously set fire to houses in the possession of his tenants under leases from himself or his ancestors, that he *ædes alienas combussit*. The judgment in *Holmes's* case, to say no more of it, was a very merciful judgment. The house might with strict legal propriety have been considered as the house of the landlord. Both landlord and tenant have a property, one temporary and limited, the other absolute and perpetual. Like the bailee and the absolute owner of goods, in the case of larceny.

By *Stat. 3 Ed. 1. c. 15*. Such as be taken for house-burning feloniously done, are not bailable by justices of the peace. See *Bail*.

**Stat. 23 Hen. 8. c. 1.** [*A. D. 1531. intituled*] "An act concerning convicts in petit treason, murder, &c."

Clergy not allowed to any person under a subdeacon committing petit treason.

"Where at a parliament holden at *Westminster* in the third year of king *Edward* the first, the same king moved the prelates of the realm, and them enjoined upon their faith that they owed to him, that in no wise they should deliver those clerks which were indicted for felony, without due purgation, so that the king should have no need to put other remedy in that behalf: (2) and that, notwithstanding after that monition, divers and many clerks convict were accustomedly delivered, and suffered to make their purgation, to the great courage of evil-doers:

*Señ. 2.* "By occasion whereof afterward, at another parliament holden at *Westminster* in the fourth year of king *Henry* the fourth, upon the complaint of the commons, the same king *Henry* the fourth then advertised the prelates of the realm of the premisses, intending them to have provided remedy by authority of the said parliament, as appertained to his prerogative royal, for the conservation of the peace of the crown; (2) At which time the archbishop of *Canterbury*, for himself and all other bishops of his province, then openly promised to the same king *Henry* the fourth, that if any person from thenceforth were convict of any treason which touched

The promise of the clergy to the king for the safe

touched not the king nor his royal majesty, and such as were notoriously keeping of known and reputed for thieves, and for such cause delivered to any ordi-  
nary as a clerk convict, that the ordinary, to whom such person or per-  
sons were delivered, should safely keep them after the effect of a consti-  
tution provincial, to be made by the said archbishop and bishops after the  
effect of the letters of *Simon*, then afore that time archbishop of *Canter-*  
*bury*, bearing date the xij. calends of *March* the year of our lord God  
M.CCC.L. (3) And that no such traitor nor felon should make his pur-  
gation against the said constitution; (4) which constitution the said arch-  
bishop then promised to deliver to the same king before his next parlia-  
ment, to the intent that if it should seem to the same king, that the same  
constitution were not sufficient remedy for the premisses, that then the  
said king might provide such remedy as should appertain in that behalf. (5)  
Sithen which time, the same constitution was never notified ne shewed by  
the prelates of this realm, but continually sithen that time manifest thieves  
and murderers, indicted and found guilty of their misdeeds by good and sub-  
stantial inquests, and upon plain and provable evidence before the king's  
justices, and afterward by the usages of the common laws of the land deli-  
vered to the ordinaries as clerks convict, be speedily and hastily delivered and  
set at large by the ministers of the said ordinaries, for corruption and lucre;  
(6) or else because the ordinaries, enclaining such offenders by the liberties  
of the church, will in no wise take the charges in safe keeping of them, but  
little regarding the trial and conviction of the said offenders by the due and  
plain course of the common laws of the land, do suffer them to make their  
purgations by such as nothing know of their misdeeds; (7) and by such  
fraud adul and make void all the good and provable trial that is used  
against such offender by the king's laws, to the great slander of such as  
pursue such misdoers, and to the pernicious example, increase and courage  
of such offenders, if the king's highness by his authority royal put not  
speedy remedy in the premisses, as appertaineth."

keeping of  
notorious ex-  
siders con-  
vict without  
purgation.

The ordi-  
nary's abuse  
in suffering  
notorious  
felons to make  
purgation.

Stat. 3. "Be it therefore enacted by the king our sovereign lord, and  
the lords spiritual and temporal, and the commons, in this present parliament  
assembled and by authority of the same, That no person nor persons, which  
hereafter shall happen to be found guilty after the laws of this land for any  
manner of petit treason, or for any wilful murder of malice prepensed, or  
for robbing of any churches, chapels, or other holy places, or for robbing  
of any person or persons in their dwelling houses, or dwelling place, the owner  
or dweller in the same house, his wife, his children or servants then being  
within, and put in fear and dread by the same, or for robbing of any  
person or persons in or about the high-ways, or for wilful burning of  
any dwelling houses, or barns, wherein any grain of corns shall happen  
to be, nor any person or persons being found guilty of any abetment,  
procurement, helping, maintaining, or counselling of or to any such petit  
treasons, murders or felonies, shall from henceforth be admitted to the  
benefit of his or their clergy, but utterly to be excluded thereof, and suffer  
death in such manner and form, as they should have done for any the  
causes or offences aforesaid, if they were no clerks; such as be within  
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Co. pl. f. 352.  
clergy taken  
from several  
persons  
which do com-  
mit divers of-  
fences. Ex-  
tended to  
counties where  
the robbery,  
&c. was not  
committed.  
3 Inst. 64, 67,  
115.  
1 E. 6. c. 12.  
Kelyng c. 7.  
68, 69. Dyer,  
f. 224. 11  
Co. 29. E.  
tended to sub-  
stantive offences  
holy offences, &c.

by 5 & 6 E. 6. holy orders, that is to say, of the orders of sub-deacon, or above, only c. 9. i Bulstr. except."

112.

None

within holy  
orders, convict  
of murder, &c.  
shall make  
purgation, un-  
less he become  
bound with  
sureties for his  
goodabearing.

*Sett.* 4. "And be it further enacted by the authority aforesaid, That every such person and persons within such orders of sub-deacon, or above, which at any time hereafter be found guilty of any petit treason, or of any murder of malice prepenfed, or of any of the felonies above rehearsed, or of an accessary to petit treason, wilful murder, or to any other the felonies above specified, and admitted to his or their clergy, and delivered to the ordinary for the same, shall not in any wise from henceforth be suffered to any purgation, nor be set at liberty, but remain and abide in perpetual prison, under the keeping of the ordinary, to whom he shall be committed, and his successors, without any manner purgation during the natural life of every such convict, (2) except only such person or persons so being within such holy orders, and convict of or for any of the offences aforesaid, and delivered to the ordinary for the same, do find two sufficient sureties by recognizance before two of the king's justices of his peace, within the same shire wherein the petit treason, murder, or felony, whereof he was convicted, was committed and done, whereof one of them to be of the *quorum*, that such convict shall be of good abearing against the king our sovereign lord, his laws and subjects; every such convict to be bound in the sum of xl. li. and every his sureties in xx. li. (3) and that no surety be taken, unless such as may dispend in lands, tenements, or hereditaments yearly, above all charges of estate of inheritance of charterhold, xxvi. s. viii. d. or else be worth xx. li. in moveable substance at the time of taking of such recognizance; (4) and that two justices of peace, whereof one to be of the *quorum*, by authority aforesaid, have power and authority to take such recognizance; (5) and that the said justices afore whom any such recognizance shall be taken, shall certify the same into the *King's Bench*, within four months next after the taking thereof; upon pain to lose and forfeit C. s. for every default thereof."

Of what estate  
the sureties  
shall be.

He that is at-  
taint of felony  
shall not make  
his purgation.

*Sett.* 5. "Provided alway, That this act extend not to give any benefit to any such person or persons, which, after their confession, or judgment given against them, of or for felony, or murder, or after they be outlawed for any such cause, be admitted to their clergy, and delivered to the ordinary for the same, but that they and every of them shall remain in the custody of the ordinaries without making purgation, upon such peril, and in such manner and form, as it was used by the common law before the making of this present act; this act or any thing therein contained notwithstanding."

An ordinary  
may disgrace  
a convict per-  
son, and send  
him to the  
King's Bench.

*Sett.* 6. "Provided always, and it is further enacted, That every ordinary, to whose custody any such convict for any of the offences above rehearsed shall be committed, may at his liberty disgrace every such convict after the laws of the church, if he see cause so to do, and send the convict so disgraced, in sure and safe keeping, into the *King's Bench*, with a certificate under his seal, testifying the said disgrading, (2) upon which the justices of the *King's Bench*, having afore them the record upon which the said person so disgraced was first convict, shall give such like judgment

of

of death upon the same record, against every such person so convicted and disgraced, as the justices afore whom he was convicted might have done, if the said person so disgraced at the time of his conviction afore them had been no clerk; his admission to his clergy, and committing to the ordinary, ne any other thing, use or custom to the contrary hereof notwithstanding; (3) and that every such judgment shall be executed accordingly; (4) and that every ordinary, so sending any such convicted disgraced into the *King's Bench*, shall be discharged against the king our sovereign lord, his heirs and successors, of or for any further custody, or keeping of the same convicted: (5) this act to continue unto the last day of the next parliament."

11 Co. f. 303.

25 H. 8. c. 1.

28 H. 8. c. 2.

Made per-

petual by 32

H. 8. c. 3.

**Stat. 25 Hen. 8. c. 3. [A. D. 1533. intituled]** "For such as stand mute, &c."

"Where at your parliament holden at *Westminster*, in the three and twentieth year of your most noble reign, among other things it was ordained, established and enacted, That no person or persons which thereafter should happen to be found guilty, after the laws of this land, for any manner of petit treason, or for any wilful murder of malice prepenfed, or for robbing of any churches, chapels, or other holy places or for robbing of any person or persons in their dwelling-houses or dwelling-place, the owner or dweller in the same house, his wife, his children, or servants then being within, and put in fear and dread by the same, or for robbing of any person or persons in or near about the high-way, or for wilful burning of any dwelling-houses or barns, wherein any grain or corn shall happen to be; nor any person or persons being found guilty of any abetment, procurement, helping, maintaining, or counselling of or to any such petit treason, murders or felonies, should from thenceforth be admitted to the benefit of his or their clergy, but utterly be excluded thereof, and suffer death in such manner and form, as they should have done for any the causes or offences aforesaid, if they were no clerks; such as be within holy orders, that is to say, of the orders of subdeacon, or above, all only except, as more at large appeareth by the said act. (2) And forasmuch as the said act extendeth only to such persons as be found guilty after the due course of the laws of this land, divers and many great errant robbers, murderers, burglars, and felons, that do offend and commit divers and many petit treasons, robberies, burglaries, and felonies contrary to the tenor of the said act, perceiving and clearly understanding by the words of the same statute and act, that they shall not lose the benefit and advantage of their clergy, unless they be found guilty after the due course of the law, upon their arraignment of and upon the said felonies, robberies, and other offences before said, so by them done and committed, by reason whereof, divers and many of the same robbers and felons, upon their arraignment of the same robberies and felonies, upon their indictments against them stand mute, and sometimes challenge peremptorily over the number of twenty, or else will not directly answer to the same indictments whereupon

1 Anderf. 114.

Clergy not al-

lowed to those

who stand

mute, or who

do make per-

emptory chal-

lenge.

Certain defects

in the statute

of 23 H. 8.

c. 1.

they be so arraigned, according to the order of the law. (3) And for that these special cases be not expressly comprised and contained within the letter of the same statute, it is necessary and expedient that the same cause be clearly and definitively expounded and declared by authority of this present parliament. (4) And whereas also divers and many felons and robbers, that commit and do divers and many great heinous robberies and burglaries in one shire, and convey the spoil and robbery into any other shire, and there be taken, indicted and arraigned upon felony and felonious stealing of the same goods in the same other shire, than there where the same robberies or burglaries were done and committed, and not upon the same robbery nor burglary, for that it was not done nor committed in the same shire where they be so indicted and arraigned, and by reason thereof the same misdemeanours, felons, robbers, and burglars have and enjoy the privilege and advantage of their clergy, to the great hurt and loss of the king's prerogative, and great boldness of such offenders:

Cases in which the benefit of clergy shall not be allowed. Repealed in part by 1 Ed. 6 c. 12 s. 10. and revived by 5 & 6 Ed. 6. c. 10. s. 4.

*Stat. 2.* "In consideration whereof, Be it enacted by the king our sovereign lord, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, That every person and persons, that is or hereafter shall be indicted of petit treason, wilful burning of houses, murder, robbery, or burglary, or other felony, according to the tenor and meaning of the same statute, and thereupon arraigned, and do stand mute of malice or froward mind, or challenge peremptorily above the number of twenty, or else will not or do not answer directly to the same indictment and felony whereupon he is so arraigned, shall from henceforth lose the benefit and privilege of his or their clergy, in like manner and form, as if he had directly pleaded to the same petit treason, murder, robbery, burglary, or other felony whereupon he is so arraigned, Not guilty, and thereupon had been found guilty, after the laws of the land."

*Stat. 3.* "And by the same authority be it further enacted, That if any person or persons hereafter be indicted of felony for stealing of any goods or chattels in any county within this realm of *England*, and thereupon arraigned and be found guilty, or stand mute of malice, or challenge peremptorily above the number of twenty persons, as is afore said, or will not upon his said arraignment directly answer to the same felony, that then the same person and persons so arraigned and found guilty, or stand mute of malice, or challenge peremptorily above the number of twenty persons, or will not directly answer to the law, shall lose and be put from the benefit of their clergy, in like manner and form as they should have been, if they had been indicted and arraigned, and found guilty in the same county where the same robbery or burglary was done or committed, if it shall appear to the justices before whom any such felons or robbers be arraigned, by evidence given before them, or by examination, that the same felonies, whereupon they be so arraigned, had been such robberies or burglaries in the same shire where such robberies or burglaries were committed or done, by reason whereof they should have lost the benefit of their clergy by force of

A man attainted where the goods were carried which were stolen in another county.

28 H. 3. c. 1. made per-

of the said statute, in case they had been found guilty thereof in the same petty by shire where such robberies or burglaries were so committed or done." 32 H. 8. c. 3.  
d. 7.

**Stat. 1 Ed. 6. c. 12.** [*A. D. 1547. intituled*] "An act for the repeal of certain statutes concerning treasons and felonies."

"Nothing being more godly, more sure, more to be wished and desired betwixt a prince, the supreme head and ruler, and the subjects, whose governor and head he is, than on the prince's part, great clemency and indulgency, and rather too much forgiveness and remission of his royal power and just punishment, than exact severity and justice to be shewed; and on the subjects behalf, that they should obey rather for love, and for the necessity and love of a king and prince, than for fear of his strait and severe laws; (2) yet such times at some time, committeth in the commonwealth, that it is necessary and expedient for the repressing of the insolency and unruliness of men, and for the foreseeing and providing of remedies against rebellion, insurrection, or such mischiefs (as God sometime with us displeased, for our punishment doth inflict and lay upon us, or the devil at God's permission, to assay the good and God's elect, doth sow and set among us) the which almighty God with his help, and man's policy, hath always been content and pleased to have staid, that sharper laws, as a harder bridle should be made, to stay those men and facts that might else be occasion, cause and authors of further inconvenience; (3) the which thing caused the prince of most famous memory, king *Henry the eighth*, father to our said sovereign lord the king, and other his highness progenitors, with the assent of the nobles and commons, at divers parliaments in their several times holden, to make and enact certain laws and statutes, which might seem and appear to men of exterior realms, and many of the king's majesty's subjects, very strait, sore, extreme and terrible, although they were then, when they were made, not without great consideration and policy, moved and established, and for the time, to the avoidance of further inconvenience, very expedient and necessary: (4) But as in tempest or winter, one course and garment is convenient, in calm or warm weather, a more liberal case or lighter garment, both may and ought to be followed and used; so we have seen divers strait and sore laws made in one parliament (the time so requiring) in a more calm and quiet reign of another prince, by the like authority and parliament repealed and taken away: (5) The which most high clemency and royal example of his majesty's most noble progenitors, the king's highness of his tender and goodly nature, most given to mercy and love of his subjects, willing to follow, and perceiving the hearty and sincere love that his most loving subjects, both the lords and commons, do bear unto his highness, now in this his majesty's tender age, willing also to gratify the same therefore, and minding further to provoke his said subjects with indulgency and clemency shewed on his highness behalf, to more love and kindness towards his majesty (if it may be) and upon trust that they will not abuse the same, but rather be encouraged thereby more faithfully, and with more diligence

Statutes concerning treasons, &c. repealed.

Sometimes sharp, and sometimes milder laws be made, according to the peoples inclinations.



gence (if it may be) and care for his majesty, to serve his highness now in this his tender age, is contented and pleased, that the severity of certain laws here following be mitigated and remitted.

All statutes made sithence the first year of H. 8. to make any thing felony, repealed.

*Señ. 4.* “ And be it further ordained and enacted by the authority aforesaid, That all offences made felony by any act or acts of parliament, statute or statutes made sithence the twenty-third day of *April* in the first year of the reign of the said late king *Henry* the eighth, not being felony before, and also all and every the branches and articles mentioned, or in any wise declared in any of the same statutes concerning the making of any offence or offences to be felony, not being felony before, and all pains and forfeitures concerning the same, or any of them, shall from henceforth be repealed and utterly void, and of none effect.”

*Stat. 5 & 6 Ed. 6. c. 10. A. D. 1552. intituled*] “ An act for the avoiding of clergy from divers persons.”

Such as rob in one shire, and fly into another, shall not have their clergy.

25 H. 8. c. 3.  
23 H. 8. c. 1.

“ Where in the parliament holden at *Westminster* upon prorogation the fifteenth day of *January* in the twenty-fifth year of the reign of our late sovereign lord king *Henry* the eighth, it is recited, That at the parliament holden at *Westminster* in the twenty-third year of the reign of the said late king, among other things it was ordained, established and enacted, That no person or persons, which after that time should happen to be found guilty, after the laws of this land, of any manner of petty treason, or for any wilful murder of malice prepensed, or for robbing of any churches, chapels, or other holy places, or for robbing of any person or persons in their dwelling-houses or dwelling-place, the owner or dweller in the same house, his wife, his children or servants then being within, and put in fear and dread by the same, or for robbing of any person or persons in or near about the highways, or for wilfully burning of any dwelling-houses or barns wherein any grains or corn shall happen to be, nor any person or persons being found guilty of any abetment, procurement, helping, maintaining or concealing of or to any such petty treason, murders or felonies, should from thenceforth be admitted to the benefit of his or their clergy, but should utterly be excluded thereof, and suffer death in such manner and form as they should have done for any the causes or offences aforesaid, if they were no clerks; (2) which act extendeth but only where such offender was convicted in such county or place where any such offence was so committed and done, and not where he or they did such offence in one county, and were taken with the manner in another county: (3) wherefore it was considered, That forasmuch as divers and many felons and robbers, that commit and do divers and many great heinous robberies and burglaries in one shire, and convey the spoil and robbery into any other shire, and there be taken, indicted and arraigned of felony, of the felonious stealing of the same goods in the same other shire than where the same robberies or burglaries were done and committed, and not of the same robbery nor burglary, for that it was not done or committed in the same shire, where they be so indicted and arraigned, and that by reason

thereof such felons, robbers and burglarors had and enjoyed the privilege and advantage of their clergy :

*Sett.* 2. " For redress whereof, it was enacted in the said parliament holden in the said xxv. year of the said late king, That if any person or persons after that time, after such robbery or burglary by him or them done in any one county, should be indicted of felony, for stealing of any goods or chattels in any other county within this realm, and thereupon arraigned and found guilty, or stand mute of malice, or challenge peremptorily above the number of xx. persons, or would not upon his or their said arraignment directly answer to the same felony, That then the same person and persons so arraigned and found guilty, or standing mute of malice, or challenging peremptorily above the number of twenty persons, or that would not directly answer to the law, should lose and be put from the benefit of his or their clergy, in like manner and form as they should have been if they had been indicted, arraigned and found guilty in the same county where such robbery or burglary, as is aforesaid, was done or committed, if it should appear to the justices before whom any such felons or robbers should be arraigned, by evidence given before them, or by examination, that the same felons and burglarors should have been put from their clergy in case they had been indicted, arraigned and found guilty in the same county where the same robberies or burglaries were committed or done, as in the same statute made in the said xxv. year, among other things, more plainly appeareth.

*Sett.* 3. " And where in the parliament holden at *Westminster* the iv. day of *November* in the first year of the reign of our sovereign lord the king that now is, it is ordained and enacted, amongst other things, That no person or persons that before that time had been, or at any time hereafter should be in due form of the laws attainted or convict of murder of malice premeditated, or of poisoning of malice premeditated, (2) or of breaking of any house by day or by night, any person being then in the same house where the same breaking had been, or after that time should be committed, being put in fear or dread; or of or for robbing of any person or persons in the highway, or near the highway, or for felonious stealing of horses, geldings or mares; (4) or of felonious taking of any goods out of any parish church, or other church or chapel; (5) or being indicted or appealed of any of the same offences, and thereupon found guilty by verdict of xii. men, or should confess the same upon his or their arraignment, or would not answer directly according to the laws of this realm, or should stand wilfully or of malice mute, (6) should not be admitted to have or enjoy the privilege or benefit of his or their clergy or sanctuary, but should be put from the same.

Wherein the  
stat. made  
1 Ed. 6. c. 12;  
dorth take a-  
way the force  
of the stat. of  
25 H. 8. c. 3.

*Sett.* 4. " And that in all other cases of felony, other than such as be before mentioned, all and singular person and persons, which after the said first day of *March* then next following should be arraigned, or found guilty upon his or their arraignment, or should confess the same, or stand mute in form aforesaid, or would not answer directly in form aforesaid, should have and enjoy the privilege and benefit of his or their clergy, and

the

the liberty and privilege of sanctuary, in like manner and form as he or they might or should have done before the xxiv. day of *April* in the first year of the reign of the said late king *Henry* the eighth, as in the said act made in the said first year, among other things, 'more plainly appeareth : (2) By reason of which article and clause contained in the said act made in the said first year, the said statute made in the said xxv. year of the said late king, which did put such felons and burglarors from their clergy, that do such offence in one county, and after are taken with the goods stolen in another county, and there indicted, arraigned and found guilty, was made void ; by reason whereof, divers and many persons that sithen the said first year have committed such robberies and burglaries in one county, and after have been taken with the manner in another county, and there indicted, arraigned and found guilty, have had and enjoyed their clergy, which they *could* not have had in case the said act, made in the said xxv. year had stood in force, to the great bolding and comfort of such offenders : (3) For redress whereof from henceforth to be had, be it enacted by the authority of this present parliament, That the said act made in the said xxv. year, touching the putting of such offenders from their clergy, and every article, clause or sentence contained in the same touching clergy, shall from henceforth, touching such offences from henceforth to be committed and done, stand, remain and be in full strength and virtue, in such manner and form as it did before the making of the said act made in the said first year of the reign of our said sovereign lord the king that now is ; any clause, article or sentence comprised in the said act made in the said first year, to the contrary thereof notwithstanding."

The stat. of 25 H. 8. c. 3 shall stand in force, notwithstanding a clause comprised in the stat. of 1 Ed. 6. c. 12.

Stat. 4 & 5 Phil. & Mar. c. 4. [A. D. 1557. intituled] "An act that accessories in murder and divers felonies, shall not have benefit of clergy."

Accessories in petty treason, felony, murder, shall not have their clergy.  
2 & 3 P. & M. c. 17.  
Savil 45.  
Dyer, f. 183, 185.  
11 Co. 26.

"For the due punishment of such as command, counsel, or hire any person or persons, to commit, perpetrate, or do any petty treason, wilful murder, or any of the offences in this present act mentioned : (2) Be it enacted by the authority of this present parliament, That all and every person and persons, that after the first day of *March* next coming shall maliciously command, hire or counsel any person or persons to commit or do any petty treason, wilful murder, or to do any robbery in any dwelling-house or houses, or to commit or do any robbery in or near any highway in this realm of *England*, or in any other the queen's dominions, or to commit or do any robbery in any place within the marches of *England* against *Scotland*, or wilfully to burn any dwelling-house, or any part thereof, or any barn then having corn or grain in the same ; that then every such offender or offenders, and every of them being outlawed thereof, or being thereof arraigned and found guilty by the order of the law, or being otherwise lawfully attainted or convicted of the same offence ; or by being arraigned thereof, do stand mute of malice or froward mind, or do challenge peremptory above the number

number of twenty perfohs, or will not anfwer directly to fuch offence, fhall not have the benefit of his or their clergy.

Sec. 2. " Provided always, and be it enacted, That every lord and lords of the parliament, and peer and peers of this realm, having place and voice in parliament, upon every indictment for any of the offences aforefaid, fhall be tried by their peers, as hath been accuftomed by the laws of this realm. Trial of a lord by his peers.

*The following are lord Hale's obfervations on the preceding acts of 23 Hen. 8. c. 1. 25 Hen. 8. c. 3. 1 Ed. 6. c. 12. 5 & 6 Ed. 6. c. 10. and 4 & 5 Phil. & Ma. c. 4.*

It feems unquestionable, that the burning of a dwelling-houfe, or any part thereof, or any out-houfe or part thereof, was a felony at common law, 1 Hale's Hift. P. C. 570. and fo was alfo the burning of a barn with hay or corn in it, though not parcel of a dwelling-houfe, but ftanding at a diftance. *Co. P. C. p. 67. 11 H. 7. 1. b.*

But as to the point of the not allowance of clergy therein, there may be fome matters to be examined: certain it is, that at this day clergy is not allowable to a party convicted of wilful and malicious burning of a dwelling-houfe, or of a barn with corn; *quod vide 11 Co. Rep. 34. Poulter's cafe, adjudged per omnes juftic'. Plow. Com. 475. Co. P. C. p. 67.* and the conftant practice hath been to deny clergy to thofe convicted of this crime; *quod vide* in the refolution of *Poulter's cafe*.

And the ftatute of 4 & 5 P. & M. cap. 4. takes away clergy from all accessaries before to the offences of wilful burning any dwelling-houfe, or of any barn then having corn or grain in the fame; And furely they took the law to be, that the principal was by law oufted of his clergy, or otherwife they would not have oufted the accessary of his clergy.

But then the queftion remains, what it was that oufted the principal of his clergy.

By the ftatute of 23 H. 8. cap. 1. clergy was oufted from all perfons found guilty of burning of any dwelling-houfe or barn, wherein any grain or corn fhould happen to be, and from all perfons found guilty of abetting, aiding or counfelling thereof, *viz.* accessaries before; except perfons in order of fubdeacon, or above. 1 Hale's Hift. P. C. 571.

The ftatute of 1 Ed. 6. cap. 12. as to divers offences therein particularly mentioned, which are for the moft part alfo included in the ftatute of 23 H. 8. carried the exclusion of clergy farther, *viz.* as to ftanding mute, or not directly anfwering, but mentions not at all wilful burning of houfes, or barns with grain; And enacted, that in all other cafes of felony, perfons indicted fhall have their clergy, as they fhould have had before 1 H. 8.

So that by the act of 1 E. 6. clergy was reftored to burning of houfes and barns with corn, notwithstanding the ftatute of 23 H. 8. or any other ftatute made fince the firft year of Henry 8. and if the oufting of the principal in arfon from his clergy refted upon the ftatute of 23 H. 8. then the ftatute of 1 Ed. 6. had reftored him to his clergy.

The folution therefore of this matter is upon two accounts.

1. Some have thought that the wilful burning of houses was not within clergy by the common law, nor by the statute of 25 E. 3. cap. 4. because it was an hostile act, and therefore, as until the statute of 4 H. 4. cap. 2. *Infidiatore viarum & depopulatores agrorum* joined with another felony, and so found, were ousted of their clergy, because favouring of acts of hostility, so *incendiatore domorum* were even by the common law ousted of clergy before the statute of 23 H. 8. and so are not restored to clergy by the general clause of the statute of 1 E. 6. and this I remember was delivered as the reason of the exclusion of clergy from wilful burning by Mr. attorney Noy, 8 Car. 1. in the *King's Bench*, and seemed to be assented to by the court.

1 Hale's Hist.  
P. C. 571.

But I think, says lord *Hale*, this will hardly help the matter, 1. Because though possibly clergy might not be allowed at common law to wilful burning, yet the statute of 25 E. 3. cap. 4. *pro clero* extends clergy to all treasons and felonies touching other persons than the king himself, and his royal majesty. 2. Because then as well a burning of a barn with hay, as a barn with corn, would be excluded from clergy, for the one is as hostile as the other.

2. Others have thought that the statute of 4 & 5 P. & M. cap. 4. taking away clergy from the accessaries before, doth not take away, by necessary consequence, the clergy from the principal, for it were not reason to think the accessary before should be in a worse condition, than the principal offender, and therefore virtually and implicatively, and by necessary consequence, it takes away clergy from the principal in all those cases, where it takes it from the accessary before, and besides, if the principal had his clergy, the accessary could not be arraigned; and this I think is true, though this case needs not this help.

1 Hale's P. C.  
572.

But I think, says lord *Hale*, and so is the book of 11 Co. Rep. 34, 35. that the statute of 25 H. 8. cap. 3. which extends to take away clergy in all those cases, which were within 23 H. 8. cap. 1. and particularly recites that of burning houses and barns with grain, and farther extends that exclusion to standing mute, not directly answering, challenging above twenty; I say that statute of 25 H. 8. was in great part repealed by the statute of 1 E. 6. and is entirely revived by the statute of 5 & 6 E. 6. cap. 10. not only as to the point of ousting clergy upon examination, but also as to the exclusion of clergy in those cases mentioned in the act of 25 H. 8. wherein burning of houses and barns with corn is expressly mentioned, so that consequently this statute of 5 & 6 E. 6. reviving the statute of 25 H. 8. repeals the generality of that clause in 1 E. 6. whereby clergy was let in, in all cases not there enumerated.

1 Hale's P. C.  
573.

And consequently the periods of this case of clergy in wilful burning standing thus:

1. Before 23 H. 8. clergy was allowable therein by force of the statute of 25 E. 3. *pro clero*.

2. After 23 H. 8. until 25 H. 8. clergy was allowable for the accessary in all cases, and for the principal in all cases, but finding him guilty.

3. after

3. After 25 H. 8. until 1 E. 6. clergy was taken away from the principal as well where he stands mute, not directly answers, or challenges above twenty, as where he is found guilty.

But the accessaries as well before as after were to have clergy.

4. After 1 E. 6. till 5 & 6 E. 6. when the statute of 25 H. 8. was revived, both principal and accessaries had their clergy in all cases of burning.

5. After 5 & 6 E. 6. till 4 & 5 P. & M. cap. 4. the principal was excluded in all cases, wherein he was excluded by the statute of 25 H. 8. as well where he stood mute, challenged above twenty, did not directly answer, as where found guilty.

But the accessaries before as well as after had their clergy.

6. By the statute of 4 & 5 P. & M. cap. 4. until this day accessaries before are excluded of clergy in all cases, but accessaries after have their clergy.

But yet there still remains two doubts.

1. Whereas the statute of 4 & 5 P. & M. cap. 4. extends to oust clergy from the accessary, as well as if he be attainted as convicted, and consequently if outlawed, he shall not have clergy, because it is an attainder; the statute of 25 H. 8. extends only to finding guilty, challenging above twenty, standing mute, or not directly answering, and it seems in attainder of the principal by outlawry he shall have his clergy; therefore *quare*, whether an attainder by outlawry oust the principal of clergy upon the statute of 23 or 25 H. 8.

2. Whereas the statute 4 & 5 P. & M. cap. 4. hath no exception of persons in the order of sub-deacon; but accessaries before are ousted of their clergy in all cases by that statute, though in orders. Hale's P. C. 574.

Yet by the statute of 25 H. 8. which is relative to the statute of 23 H. 8. principals in the order of sub-deacon, or above, have their clergy in the case of arson; for by the statute of 23 H. 8. clergy is saved to men in orders, where found guilty; and by the statute of 25 H. 8. in cases of standing mute, &c. they are ousted of their clergy as if found guilty, in which case men in orders had their clergy, and so the reviving of the statute of 25 H. 8. by that of 5 & 6 E. 6. lets in men in orders to their clergy in case of arson, which seems to make this absurdity, that the principal in arson shall have the benefit of clergy if in orders, but the accessaries before, though in orders, are excluded by the general penning of the act of 4 & 5 P. & M.

And herein there will arise a difference as to men in orders in relation to the benefit of clergy, between the case of being principal in wilful burning of houses, and the case of being principal in robbery in or near the highway, or robbing in a dwelling-house, putting the dweller in fear, or murder of malice prepenſe; for the act of 1 E. 6. cap. 12. excludeth them from their clergy generally without exception of men in orders, though they were excepted by the statutes of 23 and 25 H. 8.

But this statute of 1 E. 6. making no mention of burning of houses, the exclusion of them from clergy, if resting upon the statute of 25 H. 8. revived by 5 & 6 E. 6. excepts them.

**Stat. 37** Hen. 8. c. 6. [*A. D. 1545. intituled*] "The bill for burning of frames."

Burning a  
laden cart or  
firewood

**Seç. 4.** "If any person shall maliciously, willingly, and unlawfully, burn or cause to be burnt, any wain or cart laden with coals, or with any goods or merchandizes, or any heap of wood prepared, cut or felled for making coals, billets, or talwood, he shall forfeit treble damages to the party grieved, to be recovered by action of trespass and also 10 *l.* as a fine to the king."

**Stat. 43** Eliz. c. 13. [*A. D. 1601. intituled*] "An act for the more peaceable government of the parts of *Cumberland, Northumberland, Westmorland, and the bishoprick of Duresme.*"

Several out-  
ragious misde-  
meanors com-  
mitted in  
Cumberland,  
&c.

Forasmuch as now of late years, very many of her majesty's subjects, dwelling and inhabiting within the counties of *Cumberland, Northumberland, Westmorland*, and the bishoprick of *Duresme*, have been taken, some forth of their own houses, and some in travelling by the highway, or otherwise, and carried out of the same counties, or to some other places within some of the said several counties, as prisoners, and kept barbarously and cruelly, until they have been redeemed by great ransoms: (2) And where now of late time there have been many incursions, roads, robberies, and burning and spoiling of towns, villages and houses within the said counties, that divers and sundry of her majesty's loving subjects within the said counties, and the inhabitants of divers towns there, have been forced to pay a certain rate of money, corn, cattle, or other consideration, commonly there called by the name of *Black-mail*, unto divers and sundry inhabiting upon or near the borders, being men of name, and friended and allied with divers in those parts, who are commonly known to be great robbers and spoil-takers within the said counties, to the end thereby to be by them freed, protected and kept in safety from the danger of such as do usually rob and steal in those parts: (3) By reason whereof, many of the inhabitants thereabouts being her majesty's tenants, or other good subjects, are much impoverished, and theft and robbery much increased, and the maintainers thereof greatly encouraged, and the service of those borders and frontiers much weakened and decayed, and divers towns thereabouts much dispeopled and laid waste, and her majesty's own revenue greatly diminished: (4) Which heinous and outrageous misdemeanors there, cannot so well by the ordinary officers of her majesty in those parts be speedily prevented or suppressed, without further provision of law:

Carrying a-  
way or detain-

**Seç. 2.** "For remedy whereof, Be it enacted by the authority of this present parliament, That whosoever shall at any time hereafter, without good and lawful warrant and authority, take any of her majesty's subjects against

against his or their will or wills, and carry them out of the same counties, or to any other place within any of the said counties, or detain, force or imprison him or them as prisoners, or against his or their wills, to ransom them, or to make a prey or spoil of his or their person or goods, upon deadly feud, or otherwise: (2) Or whosoever shall be privy, consenting, aiding or assisting unto any such taking, detaining, or carrying away, or procure the taking, detaining, or carrying away of any such person or persons prisoners, as aforesaid: (3) Or whosoever shall take, receive or carry, to the use of himself, or wittingly to the use of any other, any money, corn, cattle, or other consideration, commonly called Black-mail, for the protecting or defending of him or them, or his or their lands, tenements, goods or chattels from such thefts, spoils and robberies, as is aforesaid: (4) Or whosoever shall give any such money, corn, cattle or other consideration, called *Black-mail*, for such protection, as is aforesaid: (5) Or shall wilfully, and of malice burn, or cause to be burned, or aid, procure, or consent to the burning of any barn, or stack of corn or grain, within any the said counties or places aforesaid; (6) and shall be of the said several offences, or of any of them indicted, and lawfully convicted, or shall stand mute, or shall challenge peremptorily above the number of twenty, before the justices of assizes, justices of gaol-delivery, justices of *Oyer and Terminer*, or justices of peace within any of the said counties, at some of their general sessions within some of the said counties to be holden, shall be reputed, adjudged and taken to be as felons; (7) and shall suffer pains of death, without any benefit of clergy, sanctuary or abjuration, and shall forfeit as in case of felony.

*Stat. 3.* "And where divers and sundry persons within the said counties, being indicted and outlawed for murders, robberies, burglaries, or other felonies, do notwithstanding ordinarily resort and come to markets, fairs, and other publick assemblies and meetings, and do there converse, traffick and trade with other her majesty's subjects, and are entertained, and have the privilege as men obedient to laws, and yet do never yield themselves to trial of law, nor are apprehended, whereby the ordinary proceeding of law, and execution of justice in those parts are grown into very great contempt:

*Stat. 4.* "Be it therefore likewise further enacted, That every clerk of the peace within every of the said counties shall, within the space of two months next after any outlawry within any of the said counties, deliver or cause to be delivered by writing under his hand, the names of all and every such as are or shall be hereafter outlawed within their several counties, to all and every the sheriffs of the said several counties: (2) And all and every the said sheriffs shall proclaim and publish them to be outlawed in their several county-courts, and in the city of *Carlisle*, the towns of *Penrith* and *Cockermouth* in the county of *Cumberland*, and in the towns of *Appulby* and *Kendal* in the county of *Westmorland*, and in the town of *Newcastle upon Tyne*, in the county of the town of *Newcastle upon Tyne*, and in the towns of *Morpeth*, *Alnewick* and *Hexam* in the county of *Northumberland*, and in the city of *Durresme*, and towns of *Darlington*, *Bishop Auckland*, and *Bernard-Castle* within the bishoprick of *Durresme*, and in the town of *Berwick upon Tweed*; (3) and that the

ing any person against his will.

Assenting or aiding to the taking or detaining of any person.

Receiving or carrying of Black mail.

Giving of Black-mail for protection.

Burning of barns or stacks of corn.

The aforesaid offences shall be felony, without clergy, &c.

3 Inst. 66, 67.

The names of all outlaws shall be declared to the sheriff.

Proclamation of the outlaws.



saïd sheriffs having notice, as aforesaid, shall from time to time, once in the month at their county-court, proclaim every of the saïd persons so outlawed, or hereafter to be outlawed, until they shall yield their bodies to prison: (4) And likewise, that the mayors, bailiffs, aldermen, and other chief officers within the saïd several cities and towns shall proclaim the like at every fair or fairs to be kept within the saïd cities or towns, and once every six weeks at their markets.

The punish-  
ment for re-  
lieving or con-  
ferring with  
an outlaw for  
felony.

*Señ. 5.* “ And be it also enacted, That if any person or persons, inhabiting within any the saïd several counties, shall wittingly and willingly have conference, talk, or in any sort shall relieve, entertain or confer with any such person or persons so outlawed, or hereafter to be outlawed for any such murders, burglaries robberies or other felonies, having knowledge of the same outlawries, by reason of the same proclamation, or otherwise, and then shall not with convenient speed do his best endeavour to take and arrest any such person or persons so outlawed, or to be outlawed, as is aforesaid, shall suffer imprisonment by the space of six months, without bail or mainprise, and be bound with two sufficient sureties for his good behaviour for the space of one year after, before he be enlarged of his imprisonment.

The enquiry  
and punish-  
ment of the  
offenders.

*Señ. 6.* “ And be it further enacted, That the justices of assise within any of the saïd counties, justices of gaol-delivery, justices of *Oyer and Terminer*, or justices of peace within any of the saïd counties, at any of their general sessions, shall have power and authority by virtue of this act, to enquire, hear and determine of the offences and defaults of the saïd sheriffs, mayors, bailiffs, aldermen and other officers, and of the clerks of the peace within the saïd counties, and proceed against them by information or indictment, and punish them by fine, imprisonment, or otherwise, as they shall think fit.

The authority  
of the lords  
wardens shall  
not be im-  
peached.

*Señ. 7.* “ Provided always, That this act, nor any thing therein contained, shall not extend to abridge or impeach the jurisdiction or authority of any the lords Wardens of any the marches of *England*, for and against *Scotland*; any thing in this present act to the contrary notwithstanding.”

**Stat. 22 & 23 Car. 2. c. 7.** [*A. D.* 1670. *Intituled*] “ An act to prevent the malicious burning of houses, stacks of corn and hay, and killing or maiming of cattle.”

Felony for  
wilful burning  
of any ricks  
of corn, hay,  
&c. or barns,  
&c. in the  
night time  
3 Inst. 66, 67.  
8 H. 6. c. 6.  
37 H. 8. c. 6.  
3 & 4 Ed. 6.  
c. 5.  
43 El. c. 13.

“ Whereas divers lewd and evil disposed persons intending the ruin and impoverishment of their fellow subjects, have devised, and of late secretly in the night-time, and at other times when they think their deeds are not known, frequently practised in several parts of this kingdom, unlawful and wicked courses in burning of ricks and stacks of hay, corn and grain, destroying of buildings, trees, and cutting, maiming, wounding and killing of horses, sheep, beasts, and other cattle, in contempt of the laws, and to the insupportable wrong and damage of many of his majesty's good subjects:

*Secl. 2.* “ For prevention whereof, and discovery of the offenders, Be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and of the commons in this present parliament assembled, and by the authority of the same, That where, in any part of this kingdom, any person or persons, after the first day of *March* in the year of our lord one thousand six hundred and seventy, shall in the night-time maliciously, unlawfully, and willingly burn, or cause to be burnt or destroyed, any ricks or stacks of corn, hay, or grain, barns, or other houses or buildings, or kilns, or shall in the night-time maliciously, unlawfully and willingly kill or destroy any horses, sheep, or other cattle, of any person or persons whatsoever; every such offence shall be adjudged felony, and the offenders and every of them shall suffer as in case of felony.

*Secl. 3.* “ Provided always, That no attainder for any the offences made felony by virtue of this act, shall make or work any corruption of blood, loss of dower, or disinherittance of heir or heirs.

Attainder shall not work corruption of blood, &c.

*Secl. 4.* “ And be it further enacted and declared, That in case any person or persons, who shall be convicted or attainted of any the offences made felony by virtue of this act, as aforesaid, (to avoid judgment of death, or execution thereupon for such offence) shall make his election to be transported beyond the seas, to any of his majesty’s plantations: That then the justices of assize, *Oyer* and *Terminer*, gaol-delivery or justices of the peace before whom such offender shall be convicted or attaint by virtue of this act, and every of them respectively, shall cause judgment to be entered against every such offender, that he be transported beyond the seas, to some of his majesty’s plantations, in the said judgment to be particularly mentioned and expressed, there to remain for the space of seven years; and that in pursuance of the said judgment, the sheriff or sheriffs of the county or city where such offender shall be so convicted or attainted, shall cause the said offender to be safely conveyed and embarked to be transported, as aforesaid; and if any such offender shall return into this kingdom before the expiration of the said seven years, he shall suffer death as a felon, and as if no such election to be transported had been made by him.

The party at liberty to be transported for seven years.

Felony to return before the seven years expired.

*Secl. 5.* “ And be it further enacted by the authority aforesaid, That if any person or persons shall in the night-time maliciously, unlawfully, and willingly maim, wound, or otherwise hurt any horses, sheep, or other cattle, whereby the same shall not be killed or utterly destroyed, or shall destroy any plantations of trees, or throw down any inclosures in manner aforesaid; That then every such offender or offenders shall lose and forfeit to the party grieved, treble the damage which he or they shall thereby sustain; the same to be recovered by action of trespass, or upon the case, or be taken at the common law.

Treble damages for maiming of cattle, or throwing down inclosures, &c. in the night-time.

*Secl. 6.* “ And be it enacted by the authority aforesaid, That upon the complaint and request of the party or parties injured in any such manner, any three or more justices of the peace for the county, division, city, town

Three or more justices of the peace have liberty to en-

quire of the  
offence, and  
punish the of-  
fenders.

\* town corporate, or place where such offence shall be committed, whereof one to be of the quorum, shall and may, and they are thereunto authorized and required by virtue of this act to enquire, as well by the oaths of twelve lawful men or more of the same county, as by examination of witnesses upon oath, or by any lawful ways or means which to them shall seem meet, of and concerning any the offences before incurred, and offenders therein; and in order thereunto, to issue out warrants, as well for the summoning of jurors, as for the apprehending of all such persons, as shall or may be thereof suspected, and to take their examination touching the same; as also to cause all such other persons, as to them shall seem likely to make discovery thereof, to appear before them, and to give information upon oath, of and concerning their knowledge of the premises, so as no person so to be examined by the said justices of the peace, shall be convicted, or in any wise proceeded against, for or by reason of any offence concerning which he or they shall be so examined as a witness, and shall upon such his examination make a true discovery thereof: (2) And in case any person or persons, who by the said justices be thought likely to make discovery, as aforesaid, shall refuse to appear or to be examined as a witness, being duly summoned by the said justices in pursuance of this act, It shall and may be lawful for the said justices of the peace to commit the party so refusing to the common gaol for the said county, without bail or mainprize, until he shall submit to be examined upon oath, of and concerning his knowledge touching the same offence, or the offenders by whom the same was committed.

A witness re-  
fusing to ap-  
pear, shall be  
committed to  
prison.

No person  
shall be twice  
punished for  
this offence.  
The prosecu-  
tion must be  
within six  
months.

SECT. 7. " Provided that no person, who shall be punished for any offence by virtue of this act, shall be punished for the same offence by virtue of any other act or law whatsoever; nor shall be questioned for the same, unless he be proceeded against within six months after the offence committed.

Stat. 4 & 5 Will. & M. c. 23. [A. D. 1692.] made " for the more easy discovery and conviction of such as shall destroy the game of this kingdom."

Penalty upon  
persons burn-  
ing ling, &c.  
upon heaths.

SECT. 11. " Provided always, and be it enacted, That for the better preserving the red and black game of growse, commonly called *Heath-cocks*, or *Heath-polts*, no person whatsoever, on any mountains, hills, heaths, moors, forests, chases or other wastes, shall presume to burn, between the second day of *February* and twenty-fourth day of *June*, any grig, ling, heath, furz, goss, or fern, upon pain that the offender or offenders shall be committed to the house of correction, for any time not exceeding one month, and not less than ten days, there to be whipt, and kept to hard labour."

**Stat. 1 Ann. St. 2. c. 9.** [*A. D. 1701.*] *made, among other purposes,*  
 “to prevent the wilful burning and destroying of ships.”

*Seft. 4.* “And for the effectual preventing the wilful casting away, burning, or otherwise destroying, by masters and mariners, of ships under their charge: Be it enacted by the authority aforesaid, That if any captain, master, mariner, or other officer, belonging to any ship shall, after the said twelfth day of *February* one thousand seven hundred and two, wilfully cast away, burn, or otherwise destroy the ship unto which he belongeth, or procure the same to be done, to the prejudice of the owner or owners thereof, or of any merchant or merchants, that shall load goods thereon, he shall suffer death as a felon.”

Captain, master, &c. wilfully casting away or burning, &c. any ship, shall suffer death.

*Seft. 5.* “And be it further enacted by the authority aforesaid, That all and every the said offence and offences committed on the high seas, or where the admiralty hath jurisdiction, shall be inquired, tried, heard, determined and judged, in such shires and places in the realm, as shall be limited by the queen’s commission under the great seal of *England*, in such manner and form, as in and by an act, made in the twenty-eighth year of the reign of the late king *Henry* the eighth, is directed and appointed for the trial of pirates; and that all and every person and persons, who, from and after the said twelfth day of *February* one thousand seven hundred and two, shall be convicted of any of the said offence or offences last mentioned, or shall stand mute, or peremptorily challenge above the number of twenty persons returned to serve of the jury, shall suffer death without benefit of clergy.”

Offence committed on the high seas may be tried in any shire in England, in such manner as by 28 H. 8. c. 15. is directed. Person convicted thereof to suffer death without benefit of clergy.

**Stat. 6 Ann. c. 31.** [*A. D. 1707.*] *Made,* “for the better preventing mischiefs that may happen by fire.”

*Seft. 3.* “And whereas fires often happen by the negligence and carelessness of servants, Be it therefore enacted by the authority aforesaid, That if any menial, or other servant or servants, through negligence or carelessness, shall fire or cause to be fired any dwelling-house, or out-house or houses, such servant or servants, being thereof lawfully convicted by the oath of one or more credible witnesses made before two or more of her majesty’s justices of the peace, shall forfeit and pay the sum of one hundred pounds unto the church-wardens of such parish where such fire shall happen, to be distributed amongst the sufferers by such fire, in such proportions as to the said church-wardens shall seem just; and in case of default or refusal to pay the same immediately after such conviction, the same being lawfully demanded by the said church-wardens, that then and in such case such servant or servants shall, by warrant under the hand of two or more of her majesty’s justices of the peace, be committed to some workhouse, or house of correction, as the said justices shall think fit, for the space of eighteen months, there to kept to hard labour.”

Servants who through negligence fire any house, &c. to forfeit 100*l.* or be sent to the workhouse for 18 months.

**Stat. 1 Geo. 1. St. 2. c. 48.** [*A. D. 1715. Intituled*] “An act to encourage the planting of timber-trees, fruit-trees, and other trees, for ornament,”

naments shelter, or profit ; and for the better preservation of the same ; and for the preventing the burning of woods."

*Señ. 1.* " Whereas the raising and planting of timber-trees, fruit-trees and other trees, is of very great profit and advantage to the kingdom of *Great Britain*: And whereas divers lewd and disorderly persons, and others, have riotously, and sometimes in a clandestine and malicious manner broke down, cut up, or otherwise destroyed such timber-trees, fruit-trees, and other trees, to the great discouragement of the planters and owners thereof, and the parties whose trees are so destroyed are remediless, for lack of knowing the parties so offending: Therefore for the better encouraging of persons to raise, plant, and preserve timber-trees, fruit-trees and other trees, in fields, hedge-rows, gardens and walks, and elsewhere, either for ornament, shelter or profit, and for the preventing the malicious destroying or spoiling the same, and to give remedy to such persons for making them satisfaction for all damages to be occasioned by such breaking down, cutting up, spoiling, or otherwise destroying such trees; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person or persons whatsoever, from and after the twenty-fourth day of *June* in the year of our lord one thousand seven hundred and sixteen, shall maliciously break down, cut up, pluck up, throw down, bark, or otherwise destroy, deface or spoil any timber-tree or trees, fruit-tree or trees, or any other tree or trees, the person or persons, body politick or corporate, that is, are, shall or may be damaged by the same, shall receive such satisfaction and recompence of and from the inhabitants of the parish, town, hamlet, vill or place, where such tree or trees shall be so maliciously broken down, cut up, pluckt up, throw down, barked, destroyed, defaced or spoiled, and to be viewed, and damages and costs to be recoverable and recovered against such parish, town, hamlet, vill or place, by the person or persons, whose tree or trees shall be so maliciously broke down, cut up, pluckt up, thrown down, barked, destroyed, defaced or spoiled, in the same manner and form as hedges and dikes overthrown by persons in the night, in and by an act of parliament made in the thirteenth year of the reign of king *Edward* the first, intituled, *Lords may approve against their neighbours: Usurpations of commons during the estate of particular tenants, are to be levied, and damages yielded: And where such offence or offences shall be committed in that prrt of Great Britain called Scotland, to be recoverable and recovered by way of summar action, and in the same manner and form as damages in other cases of riot are to be recovered by the laws there, unless the party or parties so offending shall, by such parish, town, hamlet, vill or place, be convicted of such offence within the space of six months from the committing such offence or offences; any law or construction to the contrary in any wise notwithstanding.*

*Señ.*

This act is explained and amended by 6 Geo. 1. c. 16.

Timber-trees, &c. maliciously broken down, &c. the parish, &c. shall make good the damage to the owner.

How the damages shall be recovered in England. 13 Ed. 1. stat. 1. c. 46.

How in Scotland.

*Señ. 2.* “ And be it further enacted and declared by the authority of Two justices aforesaid, That it shall and may be lawful to and for any two or more justices of the peace of the county, riding, division, stewardry, regality, city, town, borough or corporation, wherein any such offence or offences shall be committed, or the justices in open sessions, upon complaint to them made by any inhabitant of the aforesaid parish, hamlet, vill or place, or of the owner of such tree or trees, or of any other, to cause such offender or offenders to be apprehended for the trespasses and offences aforesaid, or any of them, and to hear and finally determine and adjudge all and every the offence and offences aforesaid: And if such justices shall convict any person or persons of all or any the trespasses or offences aforesaid, then such justices, immediately after such conviction, shall commit such offender and offenders to the house of correction, there to continue and be kept to hard labour for the space of three months, without bail or mainprize; and where there are no houses of correction, in any county, riding, division, stewardry, regality, city, town or borough, where such offender or offenders shall be convicted, the said justices shall commit such offender or offenders to such prison as is appointed for other criminals, there to continue for the space of four months; and shall also order and adjudge that such offender and offenders shall be publickly whipt by the master of such house of correction once every month, during such three months, in such borough or corporation, if the offence be committed therein, and not otherwise; or in the market-town where such house of correction stands, or in the next market-town next adjacent to such house of correction, and in the county where such offence shall be committed, on the market-day of such town, between the hours of eleven and two of the clock; and in such places where there is no house of correction, the said justices shall order and adjudge that such offender or offenders shall be publickly whipt by the hand of the common hangman or executioner once every month, during such four months, on the market-day of any borough or corporation where such offender shall be committed, or on the market-day of some town, between the hours of eleven and two of the clock.

Two justices or quarter sessions finally to determine the offences.

Offenders convicted to be sent to the house of correction for three months, or to the gaol for 4 months, and to be whipt.

*Señ. 3.* “ And be it further enacted, That before any such offender or offenders shall be discharged, he, she and they shall find sufficient sureties for his, her or their good behaviour for the space of two years thence next ensuing; any law, custom, or construction to the contrary notwithstanding.

And before discharged shall find sureties for good behaviour for two years.

*Señ. 4.* “ And whereas divers woods, underwoods and coppices have been heretofore, and lately set on fire, or burnt, to the great discouragement of planting: Be it therefore enacted and declared by the authority aforesaid, That if any person or persons shall, from and after the said twenty-fourth day of *June* one thousand seven hundred and sixteen, maliciously set on fire, or burn or cause to be burnt, any wood, underwood or coppice, or any part thereof, such malicious setting on fire, burning or causing to be burnt, shall be and is hereby declared and made felony, and the offender and offenders shall suffer, and be liable to all the

Setting any wood, &c. on fire, felony.

Offenders in Scotland to be punished as wilful fire-raisers by the act 7 Annæ, c. 21.

penalties and forfeitures, as other felons by the law now are : And where such offences are committed in that part of *Great Britain* called *Scotland*, such offender and offenders shall suffer and be liable as wilful fire-raisers, according to an act past in the seventh year of her late majesty queen *Anne*, intituled, “ An act for improving the union of the two kingdoms ;” any thing in this act contained, or in any other law or statute to the contrary in any wise notwithstanding.

Stat. 6 Geo. 1. c. 15. [*A. D.* 1719. *Intituled*] “ An act to explain and amend an act passed in the first year of his majesty’s reign, [intituled, “ An act to encourage the planting of timber-trees, fruit-trees, and other trees, for ornament, shelter, or profit, and for the better preservation of the same, and for the preventing the burning of woods,”] and for the better preservation of the fences of such woods.”

1 Geo. 1.  
stat. 2. c. 48.

Sett. 1. “ Whereas divers lewd, lawless, turbulent and disorderly persons and others, some times in an open, riotous, and tumultuous manner, and at other times in a clandestine, malicious and private manner, do (without the consent of the owners) enter the woods, wood-grounds, coppices, plantations, parks and chases of divers lords of manors, and other owners and proprietors thereof, and make great havock and destruction, by cutting down, breaking, throwing down, barking, plucking up, defacing, spoiling, taking or carrying away the wood, or springs of wood, poles, woods, tops of trees, fruit-trees, thorns, quicksets and underwoods, there growing or being, and also by breaking open, throwing down, levelling or destroying the hedges, gates, posts, stiles, railing, fences, ditches, banks, walls or other inclosures of such woods, wood-grounds, parks chases or coppices, and the offenders therein, being not discovered, pass with impunity, to the great discouragement of all owners, planters, and preservers of wood, and to the great wrong and injury of such lords of manors and other owners and proprietors of such woods, wood-grounds, parks, chases, coppices, plantations, timber-trees, fruit-trees or other trees, thorns or quicksets : And whereas some doubts have arisen, whether the offences committed in the day-time, mentioned in an act passed in the first year of his majesty’s reign, [intituled, “ An act to encourage the planting of timber-trees, fruit-trees and other trees, for ornament, shelter, or profit, and for the better preservation of the same, and for the preventing the burning of woods,”] are punishable by the said act : And whereas there is no provision made in the said act for punishing the offences committed by persons who shall break open, throw down, level or destroy the hedges, gates, posts, stiles, railing, fences, ditches, banks, walls or other inclosures of such woods, wood-grounds, plantations and coppices : Therefore for the explaining and amending the said act, and for remedying the several mischiefs herein before-mentioned, and for the better preserving of all such wood-springs or springs of wood, poles, quick-woods, plantations, under-woods, woods, coppice-woods, gates, posts, stiles, railing, fences, hedges, walls and other inclosures of woods, from being unlawfully cut, taken, spoiled, broken, burnt,

burnt, destroyed, defaced or carried away; and for the better discovering and more effectual punishment of such offenders therein, their aiders and abettors; and for the providing satisfaction for the damages the respective proprietors thereof shall sustain thereby: Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person or persons whatsoever, from and after the twenty-fourth day of *June* which shall be in the year of our lord one thousand seven hundred and twenty, shall either by day or by night cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil, or carry away any wood-springs, or springs of wood, trees, poles, wood, tops of trees, under-woods or coppice-woods, thorns or quicksets, without the consent of the owner or owners of such woods, wood-grounds, parks, chafes or coppices, plantations, timber-trees, fruit-trees or other trees, thorns or quicksets, or of the person chiefly intrusted with the care and custody thereof, or shall break open, throw down, level or destroy any hedges, gates, posts, stiles, railing, walls, fences, dikes, ditches, banks or other inclosures of such woods, wood-grounds, parks, chafes or coppices, plantations, timber-trees, fruit-trees or other trees, thorns or quicksets, such lords of manors, owners and proprietors of the same, that is, are, shall or may be damaged thereby, shall have such remedy, and have and receive such satisfaction and recompence of and from the inhabitants of the parishes, towns, hamlets, villages or places joining on such wood-springs, or springs of wood, wood-grounds, parks, chafes or coppices, and recover such damages against the parish, town, hamlet, vill or place, parishes, towns, hamlets, villages or places aforesaid, and in the same manner and form as for dikes and hedges overthrown by persons in the night, or at another season when they suppose not to be espied, as in and by an act of parliament made in the thirteenth year of the reign of king *Edward* the first, [intituled, *Lords may approve against their neighbours usurpations of commons during the estate of particular tenants,*] is set forth and provided; unless the party or parties so offending shall, by such parish, town, hamlet, vill or place, parishes, towns, hamlets, villages or places, be convicted of such offences within the space of six months from the committing such offence or offences; any law or construction to the contrary in any wise notwithstanding."

*Sett.* 2. "And be it further enacted and declared by the authority aforesaid, That if any person or persons, at any time or times, from and after the said twenty-fourth day of *June*, in a riotous, open, tumultuous, or in a secret and clandestine manner, forceably or wrongfully and maliciously, and without the consent of the proprietor, wood-reeve, wood-keeper, or person chiefly intrusted with the care, oversight and custody of such woods, wood-grounds, parks, chafes, coppices or plantations, shall cut down, destroy, break, bark, throw down, burn, take, deface, spoil or carry away any wood or springs of wood, underwood or coppice-wood, or shall in such a riotous, forceable, tumultuous, secret or clandestine manner, as aforesaid, maliciously break open, throw down, level, or destroy

After June 24; 1720. Owners of trees, hedges, &c. cut down, spoiled, &c. either by day or by night, shall have satisfaction from the inhabitants of the place in the same manner as for dikes, &c. overthrown in the night, is provided by 13 Ed. 1.

13 Ed. 1. stat. 1. c. 46. Unless the offender be convicted in six months.

Two justices of peace of the place, or the sessions, to hear complaints and finally determine all offences against this act.

any



any hedges, gates, posts, stiles, rails, fences, ditches, banks or inclosures of such woods, wood-grounds, coppices, plantations, timber-trees, fruit-trees or other trees, thorns or quicksets, that then it shall and may be lawful to and for any two or more justices of the peace of the county, riding, division, city, town, borough or corporation, wherein any such offence or offences shall be committed, or for the justices in open sessions, upon complaint to them made by any inhabitant of the aforesaid parish, hamlet, vill or place, or of the owner of such tree or trees, woods, wood-grounds, parks, chafes, coppices or plantations, or of any other, to cause such offender or offenders to be apprehended for the trespasses and offences aforesaid, or any of them, and to hear and finally determine and adjudge all and every the offence and offences aforesaid: And if such justices shall convict any person or persons of all or any the trespasses and offences aforesaid, then such justices, immediately after such conviction, shall and are hereby required to inflict all and every the same penalties and punishments in the said act of the first year of his majesty's reign herein before mentioned, as fully and largely, and in the same manner, for all and every the crimes and offences herein before expressed, although not contained in the said act, as if the same were here again repeated and re-enacted.

And if they  
convict any  
person, shall  
inflict the same  
penalties, &c.  
as in the act  
1 G. 1. stat.  
2. c. 48.

Persons sued  
may plead the  
general issue,  
and shall re-  
cover treble  
costs.

*Sett.* 3. "Provided always, and be it enacted by the authority aforesaid, That in case any action or actions, suit or suits, shall at any time hereafter be brought, commenced or prosecuted against any person or persons for any cause, matter or thing done in pursuance of this act, or the before recited acts, that the defendant or defendants in such suit or suits shall and may plead the general issue, and thereupon give the special matter of his defence in evidence; and in case a verdict passes therein for such defendant or defendants, or the plaintiff becomes nonsuit, or discontinues his action, the defendant or defendants in such case shall have and recover treble costs; any law or custom to the contrary thereof in any wise notwithstanding."

*See the act of 9 Geo. 1. c. 22 under title Black-act.*

**Stat.** 10 Geo. 2. c. 32. [A. D. 1737.] made, among other purposes, "for the more effectual punishment of persons maliciously setting on fire any mine, pit or delph of coal, or cannel coal."

9 G. 1. c. 2.  
made per-  
petual by  
31 G. 2. c. 42.  
Persons setting  
mines of coal  
on fire to suf-  
fer death.

*Sett.* 6. "And be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of *June* one thousand seven hundred and thirty-seven, and during the continuance of the before mentioned act of the ninth year of the reign of his late majesty king *George* the first, if any person or persons shall wilfully and maliciously set on fire, or cause to be set on fire, any mine, pit or delph of coal or cannel coal, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy."

And by the articles of the navy, 22 Geo. 2. c. 33. every person who shall unlawfully burn or set fire to any magazine, or store of powder, or ship,

ship, boat, ketch, hoy, or vessel or tackle or furniture thereunto belonging, not appertaining to an enemy or rebel, shall be punished with death by the sentence of a court martial."

**Stat.** 28 Geo. 2. c. 19. [A. D. 1755.] *made, among other purposes*, "for the preventing the burning or destroying of goss, furze or fern, in forests or chases."

**Se<sup>c</sup>t. 3.** "Whereas the burning and destroying of goss, furze and fern, in and upon forests and chases, as it is frequently done by divers disorderly and dissolute persons, doth not only destroy the cover necessary for the preservation of the deer and game there, but hath also been the occasion of burning, damaging and destroying of great quantities of timber, young springs of wood and underwood and fences, within the said forests and chases, and places thereunto adjacent, to the great damage and prejudice of the owners and proprietors thereof; and the laws now in being are not sufficient to prevent the same: Be it therefore enacted by the authority aforesaid, That if any person or persons, not having a right or legal licence to do the same, shall, at any time after the first day of *August* one thousand seven hundred and fifty-five, set fire to, burn or destroy, or shall abet, aid or assist in, or at the burning or destroying of any goss, furze or fern, growing or being in or upon any forest or chase, within that part of *Great Britain* called *England*, without the licence or consent of the owner or proprietor, or the person chiefly intrusted with the care, oversight and custody of such forest or chase, or some part thereof, and being brought before one or more justice or justices of the peace for the county, riding, division or place, where such forest or chase shall lie, and shall be thereof convicted by confession, or upon the oath of one or more credible witness or witnesses (which oath such justice or justices is and are hereby empowered to administer) or upon the view of such justice or justices, every such person or persons being so convicted, shall for every such offence forfeit and pay any sum not exceeding five pounds, nor less than forty shillings, one moiety thereof to the informer, and the other moiety to the use of the poor of the parish where the offence shall be committed; which penalty, in case the same be not forthwith paid, shall and may be levied by distress and sale of the offender's goods and chattels, by warrant or warrants under the hand and seal, or hands and seals of such justice or justices; and in case no sufficient distress can be found, then it shall and may be lawful for such justice or justices to commit such offender or offenders to the common gaol of the county or place where such offence shall be committed, for any time not exceeding three months, nor less than one month."

Persons convicted of setting fire to goss, furze, heath or fern, in chases or forests.

to forfeit not less than 40 s. or more than 5 l.

to be levied by distress and sale, &c.

## Butchers.

**S**TATUTES made during the reigns of king Hen. 3. king Ed. 1. or king Ed. 2. but uncertain when or in which of their times. 1 Vol. of Hawk. Stat. p. 181.

**Stat. c. 7.** [intituled] “The punishment of a butcher felling unwholsome flesh.”

A butcher that selleth swines flesh meazled, or flesh dead of the murrain, or that buyeth flesh of jews, and selleth the same unto christians, after he shall be convict thereof, for the first time he shall be grievously amerced, (2) the second time he shall suffer judgment of the pillory, (3) and the third time he shall be imprisoned and make fine, and the fourth time he shall forswear the town. And in this manner shall it be done of all that offend in like case.

**Stat. 4 Hen. 7. c. 3.** [A. D. 1487. intituled] “Butchers shall kill no beasts within any walled town, or Cambridge.”

“Item, it was shewed by a petition put to the king our said sovereign lord, in the said parliament, by his subjects and parishioners of the parish of St. Faith’s, and St. Gregory’s in London, near adjoining unto the cathedral church of St. Paul’s, That whereas great concourse of people, as well of his royal person, as of great lords and states, with other his true subjects, oftentimes was had unto the said cathedral church, and that most part throughout the parish aforesaid, the which oftentimes been greatly annoyed and distempered by corrupt airs engendered in the said parishes, by occasion of blood, and other fouler things, by reason of the slaughter of beasts, and scalding of swine, had and done in the butchery of St. Nichols’s flesh-shambles, whose corruption and foul ordure, by violence of unclean, corrupt and putrified waters, is born down through the said parishes, and compasseth two parts of the palace, where the king’s most royal person is wont to abide when he cometh to the cathedral church for any act there to be done, to the jeopardous abiding of his most noble person, and to over-great annoyance of the parishioners there, and of other the king’s subjects and strangers that pass by the same; (2) complaint whereof, at many and divers seasons, also by the space of sixteen years continually, as well by the canons, and petty canons of the said cathedral church, landlords there, as also by many other of the king’s subjects of right honest behaviour, hath been made unto divers mayors and aldermen of the city of London, and no remedy had ne found; (3) that it may please our said sovereign lord, of his abundant grace, to provide for the conservation as well of his most royal person, as to succour his poor subjects and suppliants in this behalf, considering that in few noble cities,

cities and towns, or none within christendom, whereas travelling men have laboured, the common slaughter-house of beasts should be kept in any special part within the walls of the same, lest it might ingender sickness, unto the destruction of the people: (4) The king our sovereign lord, in consideration of the premisses, hath by the advice and assent of the lords spiritual and temporal, and the commons, in the said parliament assembled, and by authority of the same, ordained and enacted, That no butcher, nor his servant, slay no manner beast within the said house called the scalding-house, or within the wall of *London*; upon pain to forfeit for every ox twelve-pence, and every cow, and every other beast eight pence; (5) the one half thereof to the king our sovereign lord, and the other half to every of the king's lieges that will sue for the same by action of debt, and no protection or esoin be allowed to any of the defendants against whom any such action shall be conceived; and that in the same action of debt such process be made, as in other actions of debt sued at the common law. (6) And over this it is ordained and enacted by the said authority, that the said ordinance, act and law extend, and be observed and kept in every city, borough, and town, walled within his realm of *England*, and in the town of *Cambridge* (the towns of *Berwick* and *Carlisle* except and foreprised.) Provided alway, that this present act begin and take effect at the feast of the *annunciation* of our lady next ensuing, and not afore."

**Stat. 2 & 3 Ed. 6. c. 15.** See this act under title **Brewers.**

2 & 3 Ed. 6.  
c. 15.

**Stat. 1 Jac. 1. c. 22.** See this act under title **Leather.**

1 Jac. 1. c. 22.

**Stat. 1 Car. 1. c. 1.** [*A. D. 1627. intituled*] "An act for the further reformation of sundry abuses committed on the *Lord's day*, commonly called *Sunday*."

1 Car. 1. c. 1.

"Forasmuch as the *Lord's day*, commonly called *Sunday*, is much broken and prophaned by carriers, waggoners, carters, wain-men, butchers and drovers of cattle, to the great dishonour of *God*, and reproach of religion; (2) Be it therefore enacted by the king's most excellent majesty, and the lords spiritual and temporal, and by the commons, in this present parliament assembled, and by the authority of the same, That no carrier with any horse or horses, nor waggon-men with any waggon or waggons, nor carmen with any cart or carts, nor wain-man with any wain or wains, nor drovers with any cattle, shall after forty days next after the end of this present session of parliament, by themselves, or any other, travel upon the said day; upon pain that every person and persons so offending shall lose and forfeit twenty shillings for every such offence: (3) or if any butcher by himself, or any other for him, by his privity or consent, shall after the end of the said forty days kill or sell any victual upon the said day, that then every such butcher shall forfeit and lose for every such offence the sum of six shillings and eight pence; (4) the said offences, and every of them being done in view of any justice of peace, mayor, or other head officer,

A carrier, &c.  
that travels on  
the Lord's day,  
shall forfeit  
20 s.

Butchers that  
sell or kill vic-  
tual upon that  
day shall for-  
feit 6 s. 8 d.

After conviction, and by warrant from a justice, &c. the constables, &c. may levy the said forfeitures to the use of the poor; or they may be recovered by suit.

officer, of an ycity, or town corporate within their limits respectively, or being proved upon oath by two or more witnesses, or by the confession of the party offending, before any such justice, mayor or head officer, within their several limits respectively, wherein such offence shall be committed:

To which end every such justice, mayor or head-officer, shall have power by this act to minister an oath to such witness or witnesses: (5) All which sums or penalties shall or may be levied by any constable, or churchwarden, by warrant from any such justice or justices of the peace, mayor or other head-officer, as aforesaid, within their several limits where such offence shall be committed or done, by distress and sale of the offender's goods, rendering to the party the overplus, or shall be recovered by any person or persons that will sue for the same, by bill, plaint or information, in any of his majesty's courts of record, in any city or town corporate, before his majesty's justices of the peace in their general sessions of the peace: (6) All which forfeitures shall be employed to and for the use of the poor of the parishes where the said offences shall be committed or done, saving only that it shall be lawful to and for any such justice, mayor or head officer, out of the said forfeitures, to reward any such person or persons that shall inform or otherwise prosecute any person or persons offending against this present act, according to their discretions, so that such reward exceed not the third part of the forfeiture: (7) provided that such bill, plaint or information, shall be commenced, sued and prosecuted in the county, city or town corporate where such offence shall be committed and done, and not elsewhere; wherein no essoin, protection or wager of law shall be allowed to the defendant: (8) provided always, that it shall be lawful for any constable or churchwarden, that shall have any suit or action brought against them for any distress by them or any of them to be taken by force of this present act, to plead the general issue, and to give the special matter in evidence: (9) provided likewise, That no person or persons whatsoever shall be impeached by this act, unless he be thereof questioned within six months after the offence committed: (10) provided further, That this act shall not in any sort abridge or take away the authority of the court ecclesiastical. (11) This act to continue to the end of the first session of the next parliament. Enforced by 29 Car. 2. cap. 7."

**Stat.** 15 Car. 2. c. 8. [A. D. 1663. intituled] "An act to prevent the selling of live fat cattle by butchers."

3 & 4 Ed. 6. "Whereas by an act made in the third and fourth years of the reign of  
c. 19. sect. 3. king Edward the sixth, it is enacted, That no person using the craft or  
22 & 23 Car. 2. c. 19. mystery of a butcher, should buy any fat oxen, steers, runts, kine, heifers,  
25 Car. 2. c. 4. calves or sheep, and sell the same again alive, upon pain of forfeiture  
1 Jac. 2. c. 17. of the cattle so sold; (2) which law hath not wrought such effectual re-  
4 & 5 W. & M. formation as was intended, by reason of the difficulty in the proof of  
c. 24. such buying and selling, being for the most part at places far distant, if  
11 & 12 W. not in several counties, by means whereof the parties so offending have  
3. c. 13. escaped unpunished:  
5 Annæ, c. 34.  
7 Annæ, c. 6.

Stat.

*Stat. 2.* "Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, That no person using the trade of a butcher, shall at any time from and after the feast of *St. Michael* the archangel next ensuing, sell, offer or expose to sale in any market, or elsewhere, either by himself, or any servant or agent whatsoever, any fat oxen, steers, runts, kine, heifers, calves, sheep or lambs alive; (2) upon pain to forfeit the double value of the cattle so sold, or offered or exposed to sale, as aforesaid; the one moiety of which forfeiture shall be to the king's majesty, his heirs and successors; and the other moiety to him or them that will sue for the same in any of his majesty's courts of record; by bill, plaint, action of debt or information, wherein no essoin, protection or wager of law shall be allowed."

Penalty upon butchers for selling live fat cattle.

*Stat. 9 Ann. c. 11.* See this act under title *Leather*.

## Butter and Cheese.

**STATUTE 9 Hen. 6. c. 8.** [*A. D. 1430. intituled*] "The weight of a way of cheese."

Item, Whereas it hath been of old times accustomed in all the counties of *England*, that all the cheeses which ought to be sold by the way should be weighed by the auncel, and because that at the last parliament holden at *Westminster* it was ordained, that the said auncels in respect of the great deceit of the same, should be destroyed, and other weights touching should be in this behalf ordained; and it is so, that the poor people of the realm be greatly deceived by the said weights touching, for that they know not how many pounds the way of cheese doth contain by the said weights touching. (2) And therefore to the intent that the said poor people shall not be in this behalf deceived, as they have been since the said last parliament, it is ordained by authority of this parliament, that the weight of a way of cheese may contain xxxii. cloves, that is to say, every clove vii. li. by the said weights touching.

It should be couching, that is, bowing downwards.

**Stat. 3 & 4 Ed. 6. c. 21.** [*A. D. 1549. intituled*] "An act concerning the buying and selling of butter and cheese."

"Be it enacted by the authority of this present parliament, That no person or persons, after the feast of the Annunciation of our lady next coming, shall buy to sell again any butter or cheese, unless he or they sell the same again by retail in open shop, fair or market, and not in gross; (2) upon pain of forfeiture of the double value of the same butter and cheese so sold contrary to the tenor of this present act: The one moiety of all which forfeiture to be to our sovereign lord the king, his heirs

cheese shall not be bought to be sold again, except it be by retail in open shop, fair or market.

Lane 19, 59. heirs and successors, and the other moiety to him or them that will sue for the same in any of the king's courts of record, wherein no wager of law, essoin or protection shall be allowed for the defendant or defendants.

Retailing. *Señ. 2.* " Provided always, and be it enacted by the authority aforesaid, London, &c. That the said word of retail mentioned in this act, shall be expounded, provided for by 21 Ja. 1. declared and taken, only where a weight of cheese, or a barrel of butter, c. 22. f. 6. or of less quantity, and not above, shall be sold at any time to any person or persons in open shop, fair or market, and that to be done without fraud or covin.

Inholders and *Señ. 3.* Provided always, That this act, or any thing therein contained, shall not extend to any innholder or victualler, for such butter or victuallers. cheese as shall be spent or uttered by retail in any of their houses; any thing contained in this act to the contrary notwithstanding. (2) This act to endure to the next parliament. 3 Car. 1. c. 4. Continued until the end of the first session of the next parliament, and farther continued by 16 Ca. 1. c. 4.

By Stat. 5 & 6 Ed. 6. c. 14. *señ. 3.* Whosoever shall ingross or get into his hands any butter or cheese, to sell the same again, shall be deemed an ingrosser. But by *señ. 7.* the buying and selling again of any butter or cheese, by any licensed badger, lader, kidder or carrier, shall not be deemed regrating. See this act at large under title *Badgers*, page 191. And see 5 Eliz. c. 12. under the same title.

*Stat. 21 Jac. 1. c. 22. [A. D. 1623. intituled]* " An act for the explanation of the statutes made in the third, fourth, and fifth years of king Edward the sixth, concerning the traders of butter and cheese."

The statutes of *" Whereas in a parliament holden at Westminster in the third and fourth years of the reign of the most excellent prince of happy memory, king Edward the Sixth, it was enacted, That no person or persons, after the 3 & 4 Ed. 6. c. 21. and 5 & 6 Ed. 6. c. 14. explained. feast of the Annunciation of our lady then next coming, should buy to sell again, any butter or cheese, unless he or they sold the same again by retail in open shop, fair or market, and not in gross; upon pain of forfeiture of double the value of the same butter and cheese so sold contrary to the tenor of the said act;*

*Señ. 2.* " In and by which act it is provided and enacted, That the said word of retail mentioned in the said act shall be expounded, declared, and taken only where a wey of cheese, or a barrel of butter, or a less quantity, and not above, should be sold at one time to any person or persons in open shop, fair or market; and that to be done without fraud or covin :

*Señ. 3.* " And whereas also by one other act made in a parliament holden at Westminster, in the fifth year of the reign of the said late king, it was enacted, (amongst other things) That whatsoever person or persons should ingross or get into his hands any butter or cheese within the realm of England, to the intent to sell the same again, should be accepted, reputed and taken to be an unlawful ingrosser, and should lose and forfeit the value of

of

of the said goods : (2) In which act there is no proviso for retailers at all ; by occasion whereof the traders for butter and cheese for the city of *London* are continually vexed and molested by common informers, sometimes upon the one statute, and sometimes upon the other, to their great loss and charge :

*Señ. 4.* “ Now for that by daily experience it is found, that the traders of butter and cheese for the city of *London*, which fetch and provide the said butter and cheese out of divers counties, upon their great travel, charge and adventure, for provision of the said city, and of others thereunto resorting, and there sell the same in their shops in open market, not only for the general use and service of the said city, and the countries adjoining, but also for any occasion which may be offered for the better expedition of his majesty’s service ; as also for victualling of ships which daily are victualled from this port of *London*, which possibly cannot be performed by the small quantities aforesaid, and according to the statute :

*Señ. 5.* “ And whereas the common informers, finding that the letter of the said statute extendeth against such as do sell above the quantity of a wey of cheese, or of a barrel of butter at one time, though it be in open shop, fair or market, and that in the other act no proviso at all is made, as aforesaid, for retailers, have of late years much troubled the traders of butter and cheese within the city of *London*, with many informations, as well upon the one statute as the other, and have gotten several sums of money for composition of them, albeit they then were and are men that have been apprentices, trained up in the said trade, and have no other living or trade of life, to their great hindrance and impoverishment :

*Señ. 6.* “ For remedy whereof, Be it enacted by the authority of this present parliament, That the said acts, or any of them, or any other act, statute, law, ordinance, or other provision whatever heretofore, for or concerning the sale of butter or cheese in open shop, fair or market, or the providing or buying of any butter or cheese, shall not in any wise extend to any person or persons, being cheese-mongers, or tallow-chandlers free of the said city, and having been brought up as apprentices by the space of seven years, trading in butter and cheese, for such butter and cheese, and either of them, as he and they shall utter and sell within *London*, and the liberties thereof, or within the borough of *Southwark*, or the city of *Westminster*, for the victualling of any of the shipping of his majesty, his heirs or successors, or for the ships of any other his majesty’s subjects, or to such butter or cheese which he or they shall sell by any quantities at one time, and to one person, not exceeding four wey of cheese, or four barrels of butter, without fraud or covin, so as he or they sell the same in open shop, fair or market ; any thing in the said acts and statutes, or any of them, to the contrary notwithstanding.

The aforesaid acts shall not extend to *London*, *Westminster* or *Southwark*.

*Señ. 7.* “ Provided nevertheless, and be it enacted by the authority aforesaid, That if the justices of the peace of any of the counties of this realm of *England*, or the dominion of *Wales*, at their quarter-sessions of

The justices of peace may restrain the traders in butter and cheese,



to buy those commodities in the country. any of the said counties, shall declare and publish in open sessions, that the traders aforesaid in butter and cheese shall forbear to buy any butter or cheese, for any time within the said county or counties, or within any parts or places of the same, that then, for and during the time of such restraint, the said traders in butter and cheese that shall buy any such butter or cheese, and sell the same again by retail, contrary to any the acts aforesaid, shall not be freed of or from any the penalties of the said acts, but shall be subject to the same, as if this act had never been made.

18 H. 6. c. 3. (2) This act to continue unto the end of the first session of the next parliament. 3 Car. 1. c. 4. Continued until the end of the first session of the next parliament, and further continued by 16 Car. 1. c. 4. 13 & 14 Car. 2. c. 26.

Stat. 13 & 14 Car. 2. c. 26. [*A. D. 1662. intituled*] "An act for reforming of the abuses committed in the weight and false packing of butter."

The contents of a kilderkin of butter.

The firkin.

The pot.

"Forasmuch as butter is one of the principal commodities of the product of this kingdom, and is not only of an universal use and expence at home, but very great quantities thereof are transported beyond the seas: (2) And whereas, by custom time out of mind used, every kilderkin of butter ought to weigh one hundred thirty and two pounds gross at the least; that is to say, one hundred and twelve pounds of neat butter, and the cask twenty pounds: (3) The firkin of butter ought to weigh sixty and four pounds, *viz.* fifty and six pounds of good and merchantable butter neat, and the cask eight pounds; (4) and the pot of butter ought to weigh twenty pounds, *viz.* fourteen pounds of good and merchantable butter neat, and the pot six pounds: (5) And whereas great complaint hath been made by the traders in butter and cheese, That by the fraudulent dealing and practice of several farmers, owners and packers of butter, and by their irregular manner of weighing with stones, iron wedges, bricks, and other unwarrantable weights, the same quantities of butter are not put up into the respective casks and pots aforesaid, and the kilderkin is commonly made to weigh six and twenty pounds, and sometimes eight and twenty pounds, and the firkin to weigh ten pounds or twelve pounds, and sometimes thirteen or fourteen pounds weight, and the pots are made generally to weigh seven pounds, and some of them eight pounds or nine pounds weight; (6) and much bad and decayed butter is mixed, and packed up into kilderkins, firkins, and other casks and pots, with sound and good butter, and immoderate quantities of salt intermixed, to the spoil of the same, and to the great wrong and abuse of his majesty in the victualling of his navy, of merchants in the victualling of their ships, and of all traders in the said commodity, and of all householders who buy the same for their expence, and to the great dishonour of the *English* nation, in the parts beyond the seas, and to the bringing of the said commodity into great disrepute abroad, whereby it yields not that price, nor is vented there in such quantities as otherwise it would.

*See.*

*Sett.* 2. " For remedy whereof, Be it enacted by the king's most excellent majesty, by and the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, That from and after the first day of *June*, which shall be in the year of our lord one thousand six hundred sixty and two, every kilderkin of butter do and shall contain one hundred and twelve pounds neat, or above, every pound containing sixteen ounces besides the tare of the cask, and not less, of good and merchantable butter: (2) Every firkin of butter do and shall contain fifty-six pounds neat, or above, besides the weight of the cask, of good and merchantable butter; (3) and every pot of butter do and shall contain fourteen pounds neat, or above, besides the weight of the pot, of good and merchantable butter: (4) And that no butter which is old or corrupt shall be mixed or packed up into any kilderkin, firkin, or other cask, vessel or pot whatsoever, with any butter which is new and sound; nor any whey-butter shall be packed or mixed with any butter that is made of cream, but that the said respective sorts of butter shall be packed up severally and apart by themselves, and shall not be mixed one with another; and that every cask or pot of butter shall be of one sort and goodness throughout such cask and pot; (5) and that no butter shall be salted with any great salt, but that all butter shall be salted and faved with small salt, nor more salt shall be intermixed with it than shall be needful for its preservation; (6) upon pain and penalty that every owner, farmer or packer of butter not putting up in each kilderkin, firkin and pot of butter to be sold, or to be exposed to sale respectively, such quantities, as aforesaid, or offending in false packing, as aforesaid, for every such offence shall forfeit the value of all the butter so false packed; (7) and for every offence where any kilderkin, firkin or pot shall be found to contain a lesser quantity of butter than by this act is appointed, six times the value of every pound of butter that shall be wanting in any such cask or pot.

A kilderkin of butter shall contain 112 lb. besides the cask.

The firkin 56 lb.

The pot 14 lb.

No old butter shall be mixed with new, nor whey-butter.

The penalty.

*Sett.* 3. " And to the intent that the benefit intended by this act may be extended with full effect to all persons who do either cut out butter by retail, or expend it, (2) Be it further enacted by the authority aforesaid, That every cheesemonger or other person whatsoever, which shall sell to any person or persons any kilderkin or kilderkins, firkin or firkins, pot or pots, or other cask of butter made after the said first day of *June*, which shall be in the year of our Lord one thousand six hundred sixty and two, shall deliver in every such kilderkin, firkin, and other cask and pot respectively, the full quantity and due quality appointed by this act, and not less; or in default thereof, shall be liable to make satisfaction to him or them that buy the same, for what shall be wanting, according to the price for which the same was sold. *Farther provided for by 4 & 5 W. & M. c. 7. sett. 2.*

Cheesemongers, and all sellers of butter by the kilderkin, or, &c. shall deliver the full quantity to the retailer. See 8 Geo. 1. c. 27.

*Sett.* 4. " And be it further enacted by the authority aforesaid, That from and after the said first day of *June*, which shall be in the year of our Lord one thousand six hundred sixty and two, no cheesemonger or other person or persons whatsoever, shall repack for sale any butter in any kilderkin,

None shall re-pack butter.

The penalty. derkin, firkin, or other cask or pot whatsoever; (2) upon pain and penalty, that every cheesenonger or other person whatsoever, which shall repack any butter into any kilderkin or kilderkins, firkin or firkins, cask or casks, pot or pots, to sell the same again, shall for every firkin, cask or pot so packed, forfeit the sum of double the value of all such butter.

Farmers and other sellers shall set their marks of the weight upon good and sufficient casks, and their names.

*Seet. 5.* " And for the better discovery of all frauds and abuses which shall be committed against this act, Be it further enacted by the authority aforesaid, That every farmer and other person and persons packing up butter in kilderkins, firkins, or any other cask whatsoever, for sale, do from and after the said first day of *June*, which shall be in the year of our Lord one thousand six hundred sixty-two, pack up his butter into good and sufficient cask, made of sound, dry, and well-seasoned timber, and shall set upon every firkin and cask whatsoever, when the same is thoroughly and fully seasoned in water, a continuing visible mark of the just weight of the empty cask, and do likewise set upon every kilderkin, firkin and cask when the same is filled with butter, the first letter of his or their christian name, and his or their surname at length, with an iron-brand; (2) upon pain and penalty that every farmer, or other person or persons whatsoever offending in not putting on the mark of such weight of kilderkin, firkin or other cask after seasoning, or not setting the first letter of his or their christian name, and his or their surname at length on every firkin and cask, as aforesaid, shall for every such offence respectively forfeit the sum of ten shillings for every hundred weight of butter, and so proportionably for a greater or lesser quantity that shall be in every such cask.

Potters shall set the weight of every pot burnt, and their names.

*Seet. 6.* " And be it further enacted by the authority aforesaid, That every potter shall set upon every pot which he shall sell for packing up butter, the just weight which shall be of every such pot when it is first burnt, together with the first letter of his or their christian name, and his or their surname at length; (2) upon pain and penalty that every potter, which shall not so do, shall forfeit and pay for every pot which he shall expose to sale for the use aforesaid, whereupon he shall not have first set the just weight, and the first letter of his christian name, and his surname at length, as aforesaid, the sum of one shilling; (3) and that no farmer or other person whatsoever shall expose to sale any butter packed up in any other pot than such as shall be marked by the potter, as aforesaid, upon penalty of two shillings for every pot of butter which he shall expose to sale as is not so marked; (4) all and every of which said offences are to be enquired of, sued for, heard and determined in the sessions of peace for the county, city, borough, town or liberty, or in the court of record of the city, borough, town or liberty wherein such offence shall be committed, by action of debt, indictment, information or presentment, wherein no essoin, protection or wager of law shall be allowed to the defendant; (5) and the one half of all such forfeitures shall be to the use of the poor people inhabiting within the parish where such offence shall be from time to time committed, to be paid to the churchwardens and overseers of th

How to be disposed.

poor of and in such parish, and the other half to him or them that will sue for the same, besides his double costs thereby expended. Double costs.

*Seff.* 7. " Provided, That every suit and information which shall be brought upon this act, shall be commenced within four months after the sale of such butter." Within what time suit must be begun upon this act.

*Stat.* 32 *Car.* 2. c. 2. [*A. D.* 1680. intituled] " An act prohibiting the importation of butter from *Ireland*."

*Seff.* 9. " And whereas the present laws do not sufficiently provide against the importation of butter and cheese out of *Ireland* into this kingdom, but that great quantities thereof are daily imported and sold, to the great loss and prejudice of this kingdom; (2) Be it therefore enacted by the authority aforesaid, That from and after the said second day of *February*, no butter or cheese shall be imported into this kingdom from the kingdom of *Ireland*: (3) And all butter and cheese imported from *Ireland*, or that shall be exposed to sale within this kingdom, shall be subject to the like seizures, and the importers or sellers thereof respectively, to the like penalties as are provided or appointed in any former law against any importer or seller, or importation of any beef, bacon or pork from the kingdom of *Ireland*, or any foreign parts; any thing in this or any former law or statute to the contrary notwithstanding." Want of provision against importation of cheese and butter. No butter or cheese shall be imported. Butter and cheese imported and exposed to sale, subject to former penalties.

*Stat.* 3 *Will.* & *Mar.* c. 8. [*A. D.* 1691. intituled] " An act for the encouragement of the breeding and feeding of cattle."

" For the encouragement of breeding and fattening of cattle for the common good and welfare of this kingdom, Be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, That from and after the first day of *March* in the year of our Lord one thousand six hundred and ninety-one, and from thence forward, it shall be lawful for all and every person or persons, native or foreign, at any time or times, to ship, lade, carry and transport, or export, from and out of any port, harbour, or place within the kingdom of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed*, into any part of the world in amity with their majesties, all sorts of beef, pork, or hogs-flesh, butter, cheese or candles, free from any custom or imposition whatsoever; the act made in the second year of their present majesties, intituled, *An act for granting to their majesties a subsidy of tunnage and poundage, and other sums of money payable upon merchandizes exported and imported*, or any other law, statute, usage, or other prohibition to the contrary thereof, in any wise notwithstanding." Beef, pork, butter, cheese, &c. may be exported custom free.

2 W. and M. c. 4.

**Stat. 4 Will. & Mar. c. 7.** [*A. D. 1692. intituled*] “An act to prevent abuses committed by the traders in butter and cheese.”

13 & 14 Car. 2. c. 26. “Forasmuch as divers counties of this kingdom consist chiefly of dairy farms, and are in great measure supported by the sale of butter and cheese, the growth and product of the same; and by an act of parliament made in the fourteenth year of the reign of his late majesty king *Charles* the second, intituled, *An act for reforming abuses in the weighing and false packing of butter*, the weight thereof is ascertained, and the goodness of the butter is secured, under the pains and penalties therein mentioned: And whereas the cheesemongers of *London*, their factors or agents (without any authority) have appointed in all or most of the sea-port towns in the said counties a certain officer, called a *Weigher*, who often times, several weeks after the cheese and butter hath been bought and approved by the factors and agents of the said cheesemongers at the seller’s house, have taken upon them (without any authority) to weigh and search the said butter when the same comes to the sea-ports to be shipped, and there pretend that the same is faulty, and set rates of deduction thereupon, and give notes thereof to the factors, who bought such butter; and when the factors come to pay the seller for the same, they demand the abatement accordingly, which if the seller refuseth to allow, there are frequent indictments or informations exhibited against the sellers, upon the said act of the fourteenth of the said late king, and great oppressions have been and are daily committed, to the great loss and damage of divers land owners and farmers in the said counties, contrary to the true intent and meaning of the said act: For prevention whereof,

Seller of butter, &c. discharged from the penalty of 13 & 14 Car. 2. c. 26. after the buyer hath bought and approved of the commodity.

*Sec. 2.* “Be it enacted by the king’s and queen’s most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That after the factor or buyer hath bought and contracted for the said commodity, and approved the same at the seller’s house, or the place where he exposes the same to sale, by searching and weighing the same (if he think fit) the seller shall not after be charged or chargeable with, or liable to any of the penalties in the said recited act of the fourteenth year of the said late king *Charles* the second, mentioned or inflicted, upon any pretence of want of weight, false packing, or mouldy butter, or the tare of weight not being set upon the cask, or otherwise; but from thenceforth shall be and is hereby discharged of and from the said act; any other law, statute, or usage to the contrary thereof in any wise notwithstanding.

Penalty upon seller changing, &c. the commodity after sold.

*Sec. 3.* And for the preventing any fraud in the seller, after the factor or buyer hath bought and contracted for the said butter, and approved of the same; Be it further enacted by the authority aforesaid, That the said factor or buyer shall set his seal or mark upon the said butter, or the cask in which it is, or his name at length; and in case the same shall afterwards be exchanged or be opened, and the cask wherein the same is put up changed, or any bad and decayed butter shall be mixed and packed up with

with sound and good butter, or any other fraud be committed by the seller, and the offender be thereof convicted upon oath made of the said offence before one or more of their majesties justice or justices of the peace by one or more witness or witnesses (which oath the said justice or justices are hereby impowered and required to administer), or upon confession of the offender or offenders before such justice or justices, the said party or parties shall forfeit the sum of twenty shillings for every such firkin and offence, to be levied by distress and sale of the offender's goods and chattels; the overplus to be restored after all charges of the said distress defrayed: And every constable of the parish, or chief constable of the hundred, where such offence shall be committed, are hereby authorized and required to levy the same accordingly by warrant under the hand and seal of the said justice or justices so to do.

*Stat. 4.* " And to the end the trade for butter and cheese may not be ingrossed by particular persons, but may be free and open to all persons, and especially to all the cheesemongers who are free of the city of London: Be it further enacted by the authority aforesaid, That all and every warehouse-keeper, weigher, searcher, or shipper of butter and cheese, at any port or place in this kingdom, shall receive, into his or their possession or warehouse, all butter and cheese that shall be brought to him or them for any of the cheesemongers free of the city of London, or other person making the said commodities, and shall take due care thereof until the same can be shipped, and shall ship the said butter and cheese successively, as it shall come to his or their hands respectively (without undue preferring one man's goods before another's) on the next ship, or hoy or vessel, that shall come to such port or place to lade butter or cheese for London (except the owners of the said goods shall give orders to the contrary), and shall receive for his and their respective care and pains therein, of the owners of the said goods, the sum of two shillings and six-pence for every load, and no more, and so proportionably: And if any such person or persons, or his or their servant or servants, shall refuse or neglect to receive such goods, or to take due care thereof, or shall not ship the said goods as they come to his or their hands successively as aforesaid, that every such offender and offenders, being thereof convicted in manner as aforesaid, shall forfeit for every firkin of butter ten shillings, and for every weigh of cheese five shillings, to be levied in manner as aforesaid.

The weigher of butter and cheese shall ship off all that belongs to the London cheesemongers.

Fee to the weigher.

Penalty upon weighers of sending.

*Stat. 5.* " And for the prevention of frauds and undue practices herein, be it further enacted by the authority aforesaid, That all and every warehouse-keeper, weigher, searcher, or shipper of butter and cheese, in any such port or place, shall, from and after the first day of April one thousand six hundred ninety and three, keep a book, wherein he and they shall duly and fairly enter all butter and cheese that shall be brought to him or them, as the same comes to his or their respective hands; in which entry shall be inserted the time when such goods were received, and the quantity of such goods, and the name of the owner of the same; and shall make the like entries when the said goods are shipped or put on board, of the time

Weigher, &c. shall keep a book of the receiving and shipping the butter, &c.

Penalty upon  
conviction be-  
fore a justice.

when the same were shipped on board, and the master's name, and the vessel's name in which the same are shipped or put on board, and to whom the same are consigned; which book so kept shall be free and open for all persons to see and search at all times, without paying any thing for such search; and if such warehouse-keeper, weigher, searcher, or shipper of butter and cheese, shall not keep such book as aforesaid, or shall refuse, neglect, or omit to make such entries therein as aforesaid, or shall make any undue entries therein (by undue preferring one man's goods before another), or shall refuse in the day time to produce such book to be searched as aforesaid; that every such offender or offenders, being thereof convicted in manner as aforesaid, shall forfeit for every firkin of butter two shillings and sixpence, and for every weigh of cheese two shillings and six pence, and for every other the aforesaid offence the sum of two shillings and six pence, to be levied in manner as aforesaid: And in case such offender or offenders shall not have goods and chattels sufficient for the levying the said penalty, that then it shall and may be lawful for the justice or justices, before whom such conviction shall be made, to commit such offender and offenders to the gaol without bail or mainprize, there to remain until such penalties shall be paid and satisfied."

Penalty upon  
master of ship  
refusing to take  
in butter, &c.

*Sett.* 6. "And be it further enacted by the authority aforesaid, that if any master of any ship, hoy or vessel coming to such port or place to lade butter and cheese, or his or their servant or servants, shall refuse to take and receive on board his and their respective vessels any such butter and cheese, as shall be tendred to be shipped by such warehouse-keeper, weigher, searcher, or shipper of butter and cheese, before the same be sufficiently laden, that then every such offender and offenders, being thereof convicted in manner as aforesaid, shall forfeit for every firkin of butter so refused five shillings, and for every weigh of cheese so refused two shillings and six pence, to be levied in manner as aforesaid."

Penalties  
divided be-  
twixt informer  
and poor.

*Sett.* 7. "Provided, That one half of all penalties and forfeitures within this act shall be to the use of the poor inhabiting within the parish where such offence shall be from time to time committed, to be paid to the churchwardens and overseers of the poor of and in such parish, and the other half to the informer, to be distributed by the said justice or justices before whom the offender or offenders shall be convicted."

Cheese-  
mongers &c.  
may make use  
of their own  
vessels.

*Sett.* 8. "Provided always, that this act nor any thing therein contained shall extend to exclude any cheesemonger or cheesemongers, free of the city of *London*, from sending his and their own proper vessels for his and their own proper and respective goods; but that it shall and may be lawful to and for such person and persons to send his and their own proper vessels, or such other vessels as he or they shall hire and send from *London* to freight by charter-party for his and their own respective proper goods, and to and for the warehouse-keeper at such ports, where such vessels shall be sent, to ship the aforesaid goods on board, and to and for such masters of such vessels, and their servants, to receive the same, as he, they, or any of them, could or might have done before the making of this act."

*Sett.* 9. "Provided that nothing in this act contained shall extend or be construed to extend to any warehouse which now is, or hereafter shall be, within the counties of *Chester* or *Lancaster*, or within the county of the city of *Chester*, nor to any vessel or boat at any time belonging-to, or that shall come into, any the ports or havens of any the said counties."

Warehouses,  
&c. in *Chester*  
and *Lancaster*  
saved.

*Sett.* 10. "Provided always, That if any person or persons shall think him or themselves aggrieved by the determination of any justice of the peace, who shall at any time act in pursuance of the powers to him given by this act, it shall and may be lawful to and for such person or persons to appeal to the next general quarter-sessions of the peace to be held for the county, riding, city or town corporate, where the said offence shall be committed, the determination of which justices shall be final and conclusive to all parties; the person so appealing first giving to the party accused a bond of the penalty of twenty pounds, with one or more sufficient sureties to the liking of the said justice of peace, from whom the said appeal shall be so made, to pay such costs to the said party accused, as the said court of quarter-sessions shall allow, in case the appellant be not relieved upon his said appeal; the said costs so to be paid within one month afore the hearing and determining the said appeal."

Appeal lies  
from justice to  
sessions, secu-  
rity being  
given for costs.

**Stat.** 8 *Geo.* 1. c. 27. [*A. D.* 1721. *Intituled*] "An act for the better preventing abuses committed in weighing and packing of butter in the city of *York*."

*Sett.* 1. "Forasmuch as butter is one of the chief commodities of the product of several parts of the county of *York*, and county of the same city, and great quantities thereof are brought into the city of *York*, from thence to be transported beyond the seas, and otherwise disposed of: And whereas there hath, time out of mind, been within the said city a free market for butter, which for many years last past hath been kept in *Micklegate* in the said city: And whereas the bringing of butter to the said market, where the same was searched and weighed, hath been found to be the most effectual means of preventing the false weighing and packing of butter, and did formerly gain a great reputation both at home and abroad, to butter brought to the said market; but of late years several farmers of dairies, owners, and other traders in butter, the better to conceal the false weighing and packing of their butter, to be by them disposed of, have neglected to bring the same to the said market to be searched and weighed, by means whereof not only the traders in the said commodity at home, but foreigners also, have been greatly deceived in the weight, goodness, and soundness thereof, and thereby the said commodity yields not that price, nor is sold in such quantities, as otherwise it would be: For remedy whereof, and for the better encouraging the said butter-trade, and (in order thereunto) for the better preventing the frauds  
and



After March  
25, 1722.  
Micklegate, or  
any other  
place in York,  
(at the electi-  
on of the  
mayor, &c.)  
shall every day  
in the week,  
except Sun-  
days be a free  
market for  
butter.

All butter  
brought to  
York to be  
sold, exported,  
&c. shall be  
weighed,  
search'd and  
seal'd at the  
said market.

Rates to be  
paid for  
searching, &c.

On non-pay-  
ment, &c.  
may detain  
any firkin, &c.

Dairy-farmer,  
&c. selling or  
transporting  
butter before  
it be brought  
to the market  
to be viewed,  
&c. shall for-  
feit for every  
firkin, &c.  
3 s. 4 d.

and abuses in the weighing and packing of butter; may it please your most excellent majesty (at the humble request of the mayor and commonalty of the said city) That it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, That, from and after the five and twentieth day of *March* one thousand seven hundred and twenty-two, *Micklegate* market aforesaid, or any other part or place of or in the said city (which the mayor and commonalty of the said city shall from time to time, judge most commodious and convenient, and for that purpose appointed) shall be every day in the week, (except *Sundays*) a free and open market for butter, and that it shall and may be lawful for any person or persons to buy or sell any butter in the said market, without any disturbance; and that, from and after the said five and twentieth day of *March* one thousand seven hundred and twenty-two, all butter brought to the said city of *York* in firkins, half-firkins, tubs or other casks, or in pots or other vessels, to be sold, or to be exported or waterborn from the said city, or from any part of the river of *Ouse*, as far as the river of *Wharfe*, shall be brought to the said market to be viewed, searched, weighed, and sealed with the seal of the said market, which the proper officer for the time being is hereby required to do; and that it shall and may be lawful to and for the said mayor and commonalty, and their successors, or their proper officer for the time being appointed, from time to time, and at all times after the said five and twentieth day of *March* one thousand seven hundred and twenty-two, to ask, demand, receive and take, of and from every person and persons that shall bring any butter to the said market to be searched and weighed, for the searching, weighing, and sealing thereof, the several antient and accustomed rates and duties herein after mentioned, and no more; (that is to say) For every such firkin, half-firkin, or other cask or pot, or other vessel of butter, as aforesaid, one half-peny, and so proportionably for any butter put into every tub or vessel containing any greater quantity of butter than a firkin; and in case of refusal, neglect or denial of payment on demand of the said several rates and prices before mentioned, the said mayor and commonalty, and their successors, shall or may detain and make stay of any firkin, half-firkin, cask, pot, tub or vessel of butter, for which the said rates and prices ought to be paid, until they shall be paid and satisfied the same.

*Sett.* 2. And for the further prevention of any fraud or abuse in the weight or false packing of butter, Be it further enacted by the authority aforesaid, That if any dairy-farmer, owner, or trader, or any other persons whatsoever, do or shall, from and after the said five and twentieth day of *March* one thousand seven hundred and twenty-two, bring any butter in firkins, half-firkins, or other casks, pots, or vessels, as aforesaid, to the said city of *York* to be sold there, or to be exported or water-born from thence, as aforesaid, from any part of the river *Ouse*, as far as the river of *Wharfe*, and shall sell or transport the same before it be brought to the butter-mar-

ket, to be there viewed, searched, and weighed, shall, upon proof thereof by one or more credible witness or witnesses upon oath before any justice of the peace of the said city, or county of the same city, forfeit for every firkin, half-firkin, or other cask, pot, or other vessel, the sum of three shillings and four pence; and in default of payment thereof upon demand, the same shall or may be levied by distress and sale of the offender's goods, by warrant under the hand and seal of any one or more justice or justices of the peace of the said city, and county of the same city, rendring to the offender the overplus (the charges of distraining being first deducted); and the one half of such forfeitures shall be to the use of the poor people inhabiting within the parish where the offence shall, from time to time, be committed, to be paid to the church-wardens and overseers of the poor of and in such parish, and the other half to the informer or informers.

To be levied by distress.

One half to the poor, where, &c. the other to the informer.

*Seet. 3.* " And whereas by an act of parliament made in the 13th and 14th years of the reign of the late king *Charles* the second, [intituled, " An act for reforming of the abuses committed in the weight and false packing of butter,] the weight thereof is ascertained, and the goodness of the butter is secured, under the pains and penalties therein mentioned; Be it further enacted by the authority aforesaid, that if any firkin, half-firkin, or pot, or other vessel of butter, which, from and after the said five and twentieth day of *March*, shall be brought to the market aforesaid by any owner, farmer, or packer of butter, shall be found, upon the searching and weighing thereof, to be faulty in the full quantity or due quality appointed by the said recited act, every such owner, farmer, or packer of butter, shall be liable to such pains, penalties and forfeitures, as are mentioned, contained, and expressed in the said recited act, to be levied as aforesaid.

13 & 14 Ca. 2. c. 26. f. 2.

If any firkin, &c. of butter, shall be faulty in quantity, or quality, the owner shall be liable to the forfeitures in 13 & 14 Ca. 2. c. 26.

*Seet. 4.* " Provided, that every prosecution or suit, which shall be brought for any offence committed against this act, shall be commenced within four months after the offence committed.

Prosecution to be in four months.

*Seet. 5.* " Provided always, That the officer or other person to be appointed for the searching, weighing and sealing of the said firkins, half-firkins, or other casks or pots of butter, shall be appointed by the mayor of the said city for the time being, and shall be sworn at the general quarter-sessions to be held for the said city of *York*, and county of the same, next after *Easter-day* yearly, for the due execution of the said office.

The mayor to appoint the searcher, who shall be sworn at Easter sessions.

*Seet. 6.* " Provided also, That if any person or persons shall think him or themselves aggrieved by any determination of any justice or justices of peace, who shall at any time act in pursuance to the power to him given by this act, it shall and may be lawful to and for such person or persons to appeal to the next general quarter-sessions of the peace to be held for the said city, and county of the same city, the determination whereof shall be final and conclusive to all parties, and they are hereby empowered to award costs to either party, as to them shall seem meet, in respect of such appeal.

Persons aggrieved may appeal to quarter-sessions, whose determination shall be final.

*Seet. 7.* " Provided also, and be it further enacted, That nothing in this act contained shall extend to compel the bringing to the said market any vessel

vessel

This act shall not extend to any vessel, containing only four pounds or under.

vessel of butter, which shall contain but the quantity of four pounds of butter, or under, or to make the said vessels liable to the said duty; any thing in this act contained to the contrary notwithstanding.

*General issue.* *Double costs.* *Sect. 8.* “ And be it enacted, That in all actions and suits, that shall be brought against any person or persons, for what he or they shall do by virtue of the true intent and meaning of this act, the person or persons so sued or molested, shall or may plead the general issue of not guilty, and give the special matter in evidence; and in every such case, if the verdict shall pass for such person or persons, or that the plaintiff or plaintiffs be nonsuit therein, or in case such action or suit shall be discontinued, the person so sued shall have his double costs, and shall recover the same as in cases where costs by law are accustomed to be recovered.”

*Stat. 17 Geo. 2. c. 8. [A. D. 1744. intituled]* “ An act to prevent the committing of abuses in the weighing and packing of butter, in the town and borough of *New Malton* in the county of *York*.”

“ Whereas great quantities of butter made and produced in several parts of the county of *York*, are brought into the town and borough of *New Malton*, where there is a navigable river, in order to be from thence transported beyond the seas, and otherwise sold and disposed of: And whereas there hath been time out of mind a free market for butter within the said town and borough of *New Malton*; but there is not (as in some other adjacent markets) any particular place provided and appointed, within the said town and borough, to which such butter shall be brought; in order to be searched, weighed, and sealed before the same be sold at the said market; and for want of which, great frauds and impositions have been made and committed by several farmers, dairymen, and other persons trading in butter, which hath tended to the disparagement of the said commodity, in the markets both at home and abroad, and to the great prejudice of the fair dealer, and of the butter trade in general: Wherefore, for preventing such frauds and abuses for the future, and for the better encouraging the said butter trade; may it please your most excellent majesty, at the humble request of the borough bailiff, and inhabitants of the said borough of *New Malton*, and of several other persons residing near the said borough, that it may be enacted, &c.”

Borough bailiff to appoint the place where the market is to be kept. Duty for searching, weighing, &c. Penalty for not bringing butter to market. Officer for searching, &c. to be appointed by the bailiff.

*Stat. 3 Geo. 3. c. 20. A. D. 1763. intituled]* “ An act for permitting the importation, from *Ireland*, of stale and dirty butter, not fit for eating, commonly called grease butter.”

“ Whereas stale and dirty butter not fit for eating, called grease butter, is an essential ingredient in the manufactory of woollen cloth, commonly called broad and narrow bays, which is carried on to a great extent: And whereas, from the scarcity of the said ingredient, the said manufactory is,  
at

at present, greatly distressed, and is in danger of being reduced, and the exportation of such goods greatly lessened: And whereas the permitting the importation, from *Ireland*, of such grease butter will be advantageous to the said manufactory, and of great public utility; Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act, the importation of stale and dirty butter, not fit to eat, called grease butter, from *Ireland*, shall be and is hereby permitted, allowed and authorized for and during the term of five years from thence next ensuing, and from thence to the end of the then next session of parliament; and that all persons shall be and are hereby exempted, freed and discharged from the payment of all subsidies, customs, rates, duties, or other impositions, and also from all penalties, forfeitures, payments and punishments, for or upon account of importing or bringing into any port within the kingdom of *Great Britain*, stale and dirty butter, not fit for eating, commonly called grease butter, from *Ireland*, during the term aforesaid; provided such butter, and the package and quantity thereof, shall be duly entered at the custom-house at any such port."

*Seff. 2.* " And be it further enacted by the authority aforesaid, That in case any such grease butter shall be stopped or seized by any of the officers of his majesty's customs at such port, under pretence of its being fit to eat, or otherwise, as not coming within the intent and meaning of this act, it shall be lawful for any two justices of the peace for the county, district or division, where the same shall be stopped or seized, and such justices are hereby authorized and required, within fourteen days after application made to them for that purpose, to hear and determine the matter in a summary way; and, for that purpose, to inspect, if they think fit, the butter in question; and also to call before them, and examine on oath, any two reputable persons, dealers in butter; one whereof shall be allowed to be chosen by the importer or proprieror, and the other by the officer or other person so stopping or seizing such grease butter, and also such other witnesses as shall be desired by either party; and the determination of the said justices therein, shall be binding and conclusive to and upon all parties, wherein no *certiorari* shall be allowed."

*Seff. 3.* " And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced against any person or persons for any thing done in pursuance of this act, the defendant or defendants in any such action, or suit, may plead the general issue, and give this act and the special matter in evidence, at any trial to be had thereupon; and that the same was done in pursuance and by the authority of this act; and if it shall appear so to have been done, the jury shall find for the defendant or defendants; and if the plaintiff shall be nonsuited, or discontinue his action, after the defendant or defendants shall have appeared, or if judgment shall be given upon any verdict or demurrer against the plaintiff; the defendant or defendants shall and may recover treble costs, and have the

like remedy for the same, as any defendant or defendants hath or have in other cases by law."

**Stat. 5 Geo. 3. c. 1.** [*A. D. 1765. intituled*] "An act for the importation of salted beef, pork, bacon and butter, from *Ireland*, for a limited time"

**Preamble.**

The importation of salted provisions allowed from *Ireland* for 12 months;  
7 Geo. 3. c. 1. until Feb. 1. 1768.

"Whereas the permitting the importation of salted beef, pork, bacon and butter, into the kingdom of *Great Britain*, from *Ireland*, for a limited time, may, at this time, be a great advantage to both kingdoms; Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That the importation of all salted beef, pork, bacon and butter, into the kingdom of *Great Britain*, from *Ireland*, shall be and is hereby permitted, allowed and authorized, for and during the term of twelve months from the commencement of this act; and that all persons shall be and are hereby exempted, freed and discharged from the payment of all subsidies, customs, rates, duties, or other impositions, and also from all penalties, forfeitures, payments and punishments, for or upon account of importing or bringing salted beef, pork, bacon or butter into the kingdom of *Great Britain*, from *Ireland*, during the term aforesaid, other than such as herein after are mentioned in respect thereof; any act or acts of parliament to the contrary notwithstanding.

upon payment of the following salt duties;

viz. 3s. 4d. per barrel for beef or pork;

1s. 3d. per 100 weight for all dried beef, neats tongues, and hog-meat; and 4d. per 100 weight for all salted butter; and so in proportion for all lesser quantities.

The duties to be paid over into the exchequer as part of the duties on salt.

**SECT. 2.** "Provided always, and to the intent that the revenue arising from salt may not be prejudiced by such importation of salted beef, pork, bacon or butter from *Ireland*, be it enacted, That from the commencement of this present act, during the continuance thereof, there shall be paid to such officer as the commissioners for the duties on salt for the time being shall appoint, at the port of *Great Britain* into which such salted beef, pork, bacon or butter shall, in pursuance of this act, be imported from *Ireland*, and before any part thereof shall be delivered out to the person or persons to whom the same shall belong or be consigned, the sum of three shillings and four pence for every barrel or cask of salted beef or pork to be imported during the continuance of this act, containing thirty-two gallons, and so in proportion for any greater or lesser quantity; and for every hundred weight of bacon, salted beef called dried beef, dried neats tongues, and dried hog-meat, the sum of one shilling and three pence; and for every hundred weight of all such salted butter, the sum of four pence; and so in proportion for every greater or lesser quantity than an hundred weight of any such salted beef called dried beef, bacon, dried neats tongues, or dried hog-meat, as or for custom or for duty, or in respect thereof: the money so arising by the importation of the said salted beef, pork, bacon, dried beef, dried neats tongues, dried hog-meat, or butter, to be paid into his majesty's exchequer, as part of the duties on salt, laid by an act of the fifth year of the reign of his late majesty king *George* the second, and continued by several subsequent acts."

*SECT.*

*Seft. 3.* “ And be it further enacted by the authority aforesaid, That if any person or persons shall, after the commencement and during the continuance of this act, land any such salted beef, pork, bacon or butter, or any salted beef called dried beef, dried neats tongues, or dried hog-meat, into the kingdom of *Great Britain*, from *Ireland*, before payment of the duty or duties by this act specified and directed, the same shall be forfeited and lost, and twenty shillings *per* barrel for every barrel or cask of such salted beef or pork, and twenty shillings *per* hundred weight for every hundred weight of such bacon, salted beef called dried beef, dried neats tongues, dried hog-meat, or salted butter, and so in proportion for any greater or lesser quantity, to be recovered of the importer or proprietor thereof; and that it shall and may be lawful to and for any person or persons, being an officer or officers of the customs, or of his majesty’s duties upon salt, to take and seize all such commodities as shall be imported and landed contrary to the true intent and meaning of this act, together with the casks, vessels, and package containing the same; and that all such penalties and forfeitures shall be distributed in manner following; that is to say, one moiety thereof to the king, his heirs and successors, and the other moiety thereof, to the person or persons who shall seize, sue or inform for the same; to be recovered by action of debt, bill, plaint or information, in any of his majesty’s courts of record at *Westminster*, or in the court of *exchequer* in *Scotland*; or may be sued for, recovered and mitigated as any forfeiture or penalty may be sued for, recovered and mitigated, by any of the laws relating to the duties on salt.”

Provisions landed without the said duties being first paid, are forfeited; together with 20s. *per* barrel for all beef and pork, and 20s. *per* 100 weight for all dried meat and butter.

Recovery, mitigation, and application, of the penalties.

*Seft. 4.* “ Provided always, and be it hereby enacted, That no drawback shall be allowed or paid for any such salted beef, pork, bacon, or butter, so imported into the kingdom of *Great Britain*, from *Ireland*, and which shall be exported from *Great Britain* elsewhere.”

No drawback to be allowed on the exportation thereof elsewhere.

*Seft. 5.* “ And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced against any person or persons for any thing done in pursuance of this act, the defendant or defendants in any such action or suit, may plead the general issue, and give this act and the special matter, in evidence at any trial to be had thereupon; and that the same was done in pursuance and by the authority of this act; and if it shall appear so to have been done, the jury shall find for the defendant or defendants: and if the plaintiff shall be nonsuited, or discontinue his action, after the defendant or defendants shall have appeared; or if judgment shall be given upon any verdict or demurrer against the plaintiff, the defendant or defendants shall and may recover treble costs, and have the like remedy for the same, as any defendant or defendants hath or have in other cases by law.”

General issue.

Treble costs.

This was a conviction for importing *Irish butter* from *Lisbon* into *England*, contrary to the act 32 *Car. 2. c. 2. seft. 9.* (see page 497.) Which conviction was to the effect following. Town and county of the town of *Kingston upon Hull* — Be it remembered, that on the 2d of *August* 34 *G. 2.* at the said town and county, *Edward Burrow Esq;* collector of his majesty’s

Conviction on Stat. 32 *Car. 2. c. 2. seft. 9.* for importing butter into this subsidies

kingdom,  
from Ireland,  
was quashed,  
because the  
butter had  
been first ex-  
ported from  
Ireland, to  
Lisbon, and  
from Lisbon  
hither. 2 Bar.  
Rep. 1173.  
Eait. 1 Geo.  
3. Rex v. Bell.

subsidies and customs within the port of the said town and county, and an inhabitant thereof, cometh in his own proper person before *John Wood* and *William Cogan* Esquires, two justices of our said lord the king assigned to keep the peace of our said lord the king within the said town and county; and, suing as well for the poor of the parish of *St. Trinity* in the said town and county, as for himself in this behalf, giveth the said justices to be informed and to understand, That certain *butter*, to wit, 547 barrels thereof, containing all together in weight 301 hundred-weight, was on the 8th day of *July* last past imported into this kingdom, to wit at the port of the said town and county, the same butter and every part thereof having been exported from out of the kingdom of Ireland to LISBON in the kingdom of Portugal, and having been FROM THENCE imported into this kingdom, to wit at the port aforesaid, in FRAUD of the revenue of our said lord the king, and contrary to the form of the statutes in that case made and provided; And that the said butter had been duly and legally SEIZED, at and in the said town, on the 28th day of *July* aforesaid, between the hours of ten and twelve in the forenoon, and duly and legally preserved and kept from that time to the time of exhibiting this information; And that the owner or owners of the said butter or any part thereof, or any person for or on the behalf of him, them or any of them, had not made it appear to any justice of the peace of and for the said town and county, by the oath of two credible witnesses or otherwise howsoever, "That the said butter was not imported in manner and form aforesaid, from the said kingdom of IRELAND into this kingdom." Whereupon the said justices did, on the 2d day of *August*, duly and legally order Mr. *Richard Bell* of the said town and country merchant, the consignee and apparent owner of the said butter and every part thereof, to be summoned to appear before them at the house of *Archibald Brown*, at the sign of the *Dog and duck* in the said town and county, on the 5th day of the said month of *August*, then and there to answer the said information and premisses. At which time and place come, before them the same justices, as well the said *Edward Burrow* as the said *Richard Bell*. And then the said *Richard Bell* having heard the said information read to him, and being asked by the said justices, "Why the said butter should not be forfeited," saith, That he hath nothing to object against the truth of the said premisses contained in the said information. Whereupon, and upon the examination of a credible witness in that behalf in the presence of the said *Richard Bell*, and because the said *Richard Bell* hath nothing to say, nor can say any thing touching the said premisses, but doth acknowledge the same to be true as the same are charged in the said information; It appears unto them the said justices, That the said information and every part thereof is true: And they the said justices do adjudge the same to be true accordingly. It is therefore considered and adjudged by them the said justices, That the said butter and every part thereof is FORFEITED; and that one moiety or half part thereof be disposed to the use of the poor of the said parish of *St. Trinity* in the said town and county, and the other moiety

moiety or half part thereof to be to the proper use of the said *Edward Burrow*. Given under our hands and seals, at the town and county of the town of *Kingston upon Hull*, this 5th day of *August* in the 34th year of, &c. and in the year of our Lord 1760.

Mr. *Morton*, for the defendant, insisted that this conviction ought to be quashed. This butter was exported from *Ireland* to *Lisbon*; and from *Lisbon* re-exported to *England*, and imported here at *Hull*: Which (he insisted) did not occasion a forfeiture of the butter. Therefore this conviction is wrong, in making it absolutely forfeited; even though it should be liable to the greater duty, and not to the less. Besides the distribution of the penalty is not agreeable to the act of parliament.

Mr. *Norton contra*, in support of the conviction: *Irish butter*, imported from *Lisbon* or any other place, is confiscatable, by 18 Car. 2. c. 2. 32 Car. 2. c. 2. s. 9. and 20 C. 2. c. 7. sect. 3. all these acts are to be considered as one law. And by them, All *Irish* butter, imported hither from any place whatsoever, is forfeitable, just as much as if it was imported directly and immediately from *Ireland*. The acts of parliament would be nugatory, if they might be evaded by touching at the *Isle of Man*, or any other place. The conviction is founded on these three statutes of C. 2. And this importation from *Lisbon* is not protected by the act of 31 G. 2. c. 28: Which allows the importation of butter from *Ireland* into *England* during six months, paying 4 d. per hundred weight. Because the butter permitted by that act to be imported must be imported immediately from *Ireland*. He compared this law to some others, where the importation must be directly from the place. — 12 Geo. 2. c. 21. (An act for taking off the duties upon woollen and bay yarn imported from *Ireland* to *England*;) 23 G. 2. c. 29. (An act to encourage the importation of pig and bar iron from his majesty's colonies in *America*;) and 32 Geo. 2. c. 11, 12. However, this conviction was unnecessary, and only *ex majori cautela*. For the goods were actually and *ipso facto* forfeited by not being claimed and proved, &c. within forty-eight hours.

Mr. *Morton* was going to reply — But lord *Mansfield* said it was needless. — Here is no suspicion of fraud. If there had, it might be a different case. It would not be worth while to go round by *Lisbon*, to evade the act; and to pay seven shillings and eight pence to avoid paying four pence. And if it be within the prohibition, it is within the permission. His lordship however proposed to the parties, That the officer of the customs (Mr. *Edward Burrow*, collector at *Hull*) should pay the proprietor, (the consignee,) the value of the butter at the time of the seizure, together with the costs. And, in order to compromise the matter, and save the bringing an action, he ordered it to stand over from *Saturday* last to this day. A third person having now named twenty-six shillings per barrel as the price that Mr. *Burrow* ought to refund to the consignee of it; And Mr. *Norton* thinking that too much; the compromise came to nothing.

For



For Mr. *Norton* thought it better for his client, to stand an action, and suffer judgment to go by default, and leave the matter to a jury, upon a writ of inquiry of the damages sustained by the seizure. Whereupon *Per Cur'* conviction was quashed."

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## Buttons.

STATUTE 13 & 14 *Car. 2. c. 13.* [*A. D. 1662. Intituled*] "An act prohibiting the importation of foreign bone-lace, cut-work, imbroidery, fringe, band-strings, buttons and needle-work."

"Whereas great numbers of the inhabitants of this kingdom are employed in the making of bone-lace, band-strings, buttons, needle-work, fringe and imbroideries, who by their industry and labour have attained and gained so great skill and dexterity in the making thereof, that they make as good of all sorts thereof, as is made in any foreign parts, by reason whereof they have been heretofore able to relieve their poor neighbours, and maintained their families, and also enabled to set on work many poor children, and other persons who have very small means, or maintenance of living, other than by their labours and endeavours in the said art: (2) And whereas the persons so employed in the said mystery have heretofore served most parts of this kingdom with bone-lace, band-strings, buttons, needle-work and imbroidery; and for the carrying on, and managing of the said trade, they have procured great quantities of thread and silk to be brought into the kingdom from foreign parts, whereby his majesty's customs and revenues have been much advanced, (3) until of late, that great quantities of foreign bone-lace, band-strings, needle-work, cut-work, fringe, silk, bone-lace, buttons and imbroidery were brought into this kingdom by foreigners and inhabitants of this kingdom, and sold to shop-keepers, and others, dealers in the said commodity, as well by wholesale as retail, without ever entring of the same in any his majesty's custom-houses, or paying any duty or custom for the same; (4) by means whereof, the said trade and calling is of late very much decayed, those employed in the said callings very much impoverished; the manufacture much decreased, and great quantities thereof already made, left on their hands that make it, his majesty defrauded and deceived in his customs, and many thousand poor people formerly kept on work in the said art, like to perish for want of employment; (5) there being daily great sums of money exported out of this kingdom for the buying and fetching in of the said commodity, to the great impoverishment of the nation by the consumption of the bullion and treasure thereof, and contrary

trary to several statutes made in the first of king *Richard* the third, in the third of king *Edward* the fourth, in the nineteenth of king *Henry* the seventh, and the fifth of queen *Elizabeth*, and to a late proclamation made by his majesty that now is, dated the twentieth day of *November* last, for the putting the said laws in execution :

*Sett.* 2. “ For redress whereof, and prevention of the like mischiefs for the future, and the better relief, comfort, and subsistence of those employed in the said art and manufacture, and for the quickning, reviving, explaining, amending, and more effectual execution of the said statutes ; (2) Be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, That no person or persons whatsoever shall, from and after the twenty-fourth day of *June* one thousand six hundred sixty-two, sell or cause to be sold, or offer to sale, within the kingdom of *England*, or dominion of *Wales*, or export any foreign bone-lace, cut-work, imbroidery, fringe, band-strings, buttons or needle-work made of thread, silk, or any or either of them, in parts beyond the seas, or import, bring in, send, or convey, or cause to be brought in, sent or conveyed into the kingdom of *England*, or dominion of *Wales*, any such foreign bone-lace, cut-work, fringe, imbroidery, band-strings, buttons or needle-work, made of thread, silk, or any, or either of them, beyond the seas, after the first day of *May*, which shall be in the said year of our lord one thousand six hundred sixty and two ; (3) upon pain that all and every person or persons who shall sell, or cause to be sold, or offered to sale any such foreign bone-lace, cut-work, imbroidery, fringe, band-strings, buttons or needle-work, shall forfeit and lose for every such offence by him committed contrary to this act, the sum of fifty pounds, and the whole bone-lace, cut-work, imbroidery, fringe, band-strings, buttons or needle-work so sold, or caused to be sold, or offered to sale : (4) And upon further pain, That all and every person or persons who shall import, bring in, send or convey, or cause to be brought in, sent or conveyed into this kingdom of *England*, or dominion of *Wales*, any such bone-lace, cut-work, imbroidery, fringe, band-strings, buttons or needle-work, shall forfeit and lose for every offence by him committed contrary to this act, the sum of one hundred pounds, and the whole bone-lace, cut-work, imbroidery, fringe, band-strings, buttons or needle-work so imported, brought in, sent or conveyed, or caused to be imported, brought in, sent or conveyed contrary to the form and effect of this present act, as aforesaid : (5) The moieties of all which forfeitures to be to the use of our sovereign lord the king’s majesty, his heirs and successors ; and the other moiety to him or them that shall sue for the same in any of the king’s courts of record, by bill, plaint, action of debt, information or otherwise, wherein no essoin, protection, or wager of law shall be allowed, at every time, and as often as any person shall be found to offend in selling, importing, conveying or bringing in, as aforesaid.

Foreign bone-lace, cut-work, imbroidery, fringe, band strings, prohibited to be sold, imported from beyond sea.

This act enlarged by 4 & 5 W. & M. c. 10. as to foreign buttons made of hair, and repealed by 5 Annæ, c. 17. f. 1. as to foreign lace-made of thread.

The penalty.

One moiety to the king, the other to the prosecutor.

“ *Sett.* 3. And be it further enacted by the authority aforesaid, That for the preventing of the importing of the said manufactures, as aforesaid, upon Every justice of peace may grant warrants to

search for  
manufactures  
prohibited by  
this act.

upon complaint and information given to the justices of the peace, or any, or either of them within their respective counties, cities and towns corporate, at times reasonable, he or they are hereby authorized and required to issue forth his or their warrants to the constables of their respective counties, cities and towns corporate, to enter and search for such manufactures in the shops being open, or ware-houses, and dwelling-houses of such person or persons as shall be suspected to have any such foreign bone-laces, imbroideries, cut-work, fringe, band-strings, buttons or needle-work, within their respective counties, cities and towns corporate, and to seize the same; any act, statute or ordinance to the contrary thereof in any wise notwithstanding.

The time li-  
mited for ac-  
tions upon this  
act.

*Secl. 4.* "Provided always, and be it hereby enacted and declared, that all informations actions and suits, that shall be commenced for any offence committed against this law, shall be brought and commenced within twelve months after the discovery of such offence; any former act or law to the contrary notwithstanding."

*Stat. 4 Will. & Ma. c. 10. [A. D. 1692. Intituled]* "An act for prohibiting the importation of all foreign hair buttons."

13 & 14 Car.  
2. c. 13.

"Whereas by an act made in the fourteenth year of the reign of his late majesty king *Charles* the second, intituled, "An act for prohibiting the importation of foreign bone-lance, cut-work, imbroidery, fringe, band-strings, buttons, and needle work," amongst other things in the said act mentioned, all foreign buttons made of thread or silk are prohibited to be imported and sold in the kingdom of *England*, or dominion of *Wales*: And whereas since the making of the said act, hair buttons are chiefly used and worn, and the button makers of *England* do make better hair buttons than any that are imported from foreign parts, and are able to supply this kingdom with greater quantities of them than they can make use of; yet because buttons made of hair are not expressly mentioned in the said act (although they were thereby intended to be prohibited) many persons who are enemies to the manufactures of this kingdom, taking advantage of the said omission, do daily import such great quantities of hair buttons, and the button trade of *England* is very much decayed, and many thousands of poor people, that were formerly kept at work in the said trade, are like to perish for want of employment, and all the other mischiefs mentioned in the said act, which relate to the button trade, and were thereby intended to be remedied, are become as great as they were at the time of making of the said act, for redress, whereof, and the more effectual prevention of the like mischiefs for the future:

Foreign hair  
buttons not to  
be imported,  
&c.

*Secl. 2.* "Be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the five and twentieth day of *March* in the year of our lord one thousand six hundred ninety and three, no foreign buttons made or to be made of hair, nor any other foreign

foreign buttons whatsoever, shall be imported, brought in, sent or conveyed into the kingdom of *England*, dominion of *Wales*, or port or town of *Berwick upon Tweed*, or bartered, sold, exchanged, or offered to be bartered, sold or exchanged, upon pain of forfeiting all the said buttons so imported, brought in, bartered, sold or exchanged, or offered to be bartered, sold, or exchanged, and upon such further and other pains, penalties, and forfeitures as are mentioned, contained and expressed in the said recited act; one moiety of all which forfeitures to be to the use of our sovereign lord and lady the king and queen, their heirs and successors, and the other moiety thereof to the person or persons, that shall sue for the same in any of their majesties courts of record, by bill, plaint, action of debt, information, or otherwise, wherein no essoin, protection or wager of law shall be allowed.

Penalty:

*Stat. 3.* "And be it further enacted by the authority aforesaid, That for the preventing the importing, bartering, selling, vending, or exposing to sale any foreign buttons whatsoever, the justices of the peace within the kingdom of *England*, dominion of *Wales*, or port or town of *Berwick upon Tweed*, within their several and respective counties, cities and towns corporate, have the same authority and power, and the same authority and power is hereby given unto the said justices, to issue forth their warrants to seize, or cause to be seized, all foreign buttons whatsoever, as by the said act is given unto them for the seizing of foreign buttons made of thread or silk, and other the manufactures in the said act mentioned."

Justices of peace have power to seize.

*Stat. 10 Will. 3. c. 2.* [*A. D. 1698. Intituled*] "An act to prevent the making or selling buttons, made of cloth, serge, drugget, or other stuffs."

"Whereas the maintenance and subsistence of many thousands of men, women, and children, within this kingdom, depends upon the making of silk, mohair, gimp, and thread buttons with the needle, and great numbers of throwsters, twistlers, spinners, winders, dyers and others are employed in preparing the materials of which such buttons are made: And whereas the silk and mohair, wherewith the said buttons are made, is purchased in *Turkey*, and other foreign parts, in exchange for our woollen manufacture, to the great consumption and encouragement thereof: And whereas the making of such needle-wrought buttons hath of late been much lessened and discouraged by the making and wearing of buttons made of the shreds of cloth, serge, drugget, frize, camlet, and other stuffs and materials of which clothes are usually made, and also by buttons made of wood only, and turned in imitation of other buttons; to the great impoverishment of all those whose livelyhood depended upon the making the said needle-wrought buttons, and preparing the materials thereof; and to the great prejudice of the woollen manufacture wherewith such materials are purchased, as aforesaid; by which means great numbers of the said poor people are become burdensome to their respective parishes: For remedy whereof Be it enacted by the king's most excellent

No buttons to be fold, or made of cloth, serge, &c. or of wood.

Penalty. The penalty made 5 l. by 8 Annæ, c. 6. and 40 s. laid on the wearer by 7 Geo. 1. stat. 1. c. 12. f. 1.

2 Salk. 612.

majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the tenth day of *February* one thousand six hundred ninety and eight, no person or persons whatsoever, within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, shall make, sell or set on, or cause to be made, sold or set on any clothes or wearing garments whatsoever, any buttons made of cloth, serge, drugget, frize, camlet, or any other stuffs of which clothes and wearing garments are usually made, or any buttons made of wood only, and turned in imitation of other buttons, upon forfeiture of the sum of forty shillings for every dozen of such buttons so made, sold or set on, or caused to be made, sold or set on, as aforesaid, and in like proportion for any lesser quantity; one moiety thereof to be to the use of his majesty, his heirs and successors, and the other moiety thereof to him, her or them that shall sue for the same, by action of debt, bill, plaint or information, in any of his majesty's courts of record, wherein no essoin, protection or wager of law, or more than one imparlance shall be allowed."

By *Stat. 11 & 12 Will. 3. c. 3. sect. 15. English* bone-lace, needle-work, point, or cut-work may be exported custom-free.

**Stat. 8 Ann. c. 6.** [*A. D. 1709. Intituled*] "An act for employing the manufactures by encouraging the consumption of raw silk and mohair yarn."

"Whereas the maintenance and subsistence of many thousands of men, women and children, within this kingdom of *Great Britain*, depends upon the making of silk, mohair, gimp and thread buttons and button-holes with the needle, and great numbers of throwsters, twistlers, spinners, winders, dyers and others are employed in preparing the materials of which such buttons and button-holes are made: And whereas the silk and mohair wherewith the said buttons and button-holes are made, is purchased in *Turkey* and other foreign parts, in exchange for the woollen manufactures of *Great Britain*, to the great consumption thereof; and for the encouragement of such numerous manufacturers and manufactures, an act was made in the tenth year of the reign of his late majesty king *William* the third (of glorious memory) (intituled, "An act to prevent the making or selling buttons, made of cloth, serge, drugget or other stuffs or materials,") under the forfeitures therein mentioned; but that the intended encouragement by the said act has, in a great measure, been rendered ineffectual, by a late and unforeseen practice of making and binding of button-holes with cloth, serge, drugget or other stuffs, to the great discouragement of and abatement in the consumption of raw silk and mohair yarn, and the utter ruin of numerous families, who used to manufacture the said materials, if not speedily prevented: For remedy whereof, and making the said recited act of parliament more effectual, Be it enacted by the queen's most excellent majesty, by and with the advice and

10 W. 3. c.  
2.

and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That, from After March 25, 1710.  
and after the five and twentieth day of *March* one thousand seven hundred and ten, no taylor, nor other person or persons whatsoever, within the kingdom of *Great Britain*, shall make, sell, set on, use or bind, or cause to be made, fold, set on, used or bound on any clothes, or wearing garments whatsoever, any buttons or button-holes made of, or used, or bound with serge, drugget, frize, camlet, or any other stuffs of which clothes and wearing garments are usually made, upon forfeiture of the sum of five pounds for every dozen of such buttons or button-holes so made, fold, set on, used or bound, or caused to be made, fold, set on, used or bound, as aforesaid, and in like proportion for any lesser quantity; one moiety thereof to be to the use of her majesty her heirs and successors, and the other moiety thereof to him, her or them that shall sue for the same, by action of debt, bill, plaint or information, in any of her majesty's courts of record, wherein no essoin, protection or wager of law, or more than one imparlance shall be allowed; or upon complaint to any two justices of the peace of the county, riding, division, city or town corporate, where the matter in controversy ariseth, who are hereby empowered to summon, and examine witnesses on oath concerning the same, and levy the penalty in this act mentioned, and return the overplus, if any be, to the owner or owners thereof: But in case any person shall think himself aggrieved by any judgment or order of the said justices, it shall and may be lawful for such person to appeal against the judgment and order of the said two justices to the justices of the peace, in the general quarter-sessions of the peace, which shall be held for the same county, riding, division, city or town corporate, next after notice of such order of the said two justices; and the justices of the peace in the said general quarter-sessions, are hereby empowered to summon and examine witnesses on oath, and to hear and finally determine the matter of the said appeal; and in case the same justices in the said general quarter-sessions shall give judgment against such appellant, then the same justices shall award and order to the party, on whose behalf the same appeal is determined, such reasonable costs and charges to be paid by such appellant, in regard of such appeal, as to the same justices shall seem meet. And this act shall be taken and allowed, in all courts within this kingdom, as a publick act, and all judges, justices, and all other persons therein concerned, are hereby required as such to take notice thereof, without special pleading the same. This act is altered and farther enforced by 4 *Geo. 1. c. 7.* and by 7 *Geo. 1. stat. 1. c. 12. sect. 1.* The penalty of forty shillings *per* dozen is laid on the wearer.

None shall make, sell, or any buttons or button-holes made or bound with serge, &c.

on forfeiture of 5l for every dozen, &c. One moiety to the queen, the other to him who will sue, &c.

Two justices may by warrant levy the penalty.

But persons aggrieved may appeal to the sessions;

who are empowered finally to determine the matter. The appellant to pay costs, if determined against him.

This to be taken as a publick act.

**Stat. 4 Geo. 1. c. 7.** [*A. D. 1717. Intituled*] "An act for making more effectual an act made in the eighth year of the reign of the late queen *Anne*," [intituled, *An act for employing the manufactures, by encouraging the consumption of raw silk and mohair yarn.*]

**Secl. 1.** Whereas by an act made in the eighth year of the reign of her late majesty queen *Anne*, [intituled, "An act for employing the manufactures," 8 A. c. 6.]

After March  
25, 1718.  
no taylor, &c.  
shall make, sell,  
set on, &c.  
any buttons  
or button-  
holes made of  
cloth, serge,  
&c. on any  
clothes what-  
so ever, on pe-  
nalty of 40 s.  
per dozen.  
By 7 Geo. 1.  
stat 1. c. 12.  
s. 1. 40 s. is  
laid on the  
wearer.

factures, by encouraging the consumption of raw silk and mohair yarn"] the said act having proved ineffectual to prevent the mischiefs intended to be remedied by the said act: For remedy whereof, and making the said recited act of parliament more effectual, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That, from and after the twenty-fifth day of *March* one thousand seven hundred and eighteen, no taylor, or other person or persons whatsoever, within the kingdom of *Great Britain*, shall make, sell, set on, use or bind, or shall cause to be made, sold, set on, used or bound, on any clothes or wearing garments whatsoever, any buttons or button-holes made of, or used or bound with cloth, serge, druggat, frize, camlet, or any stuffs that clothes or wearing garments are usually made of, upon the forfeiture of the sum of forty shillings for every dozen of such buttons and button-holes so made, sold, set on, used or bound, or shall cause to be made, sold, set on, used or bound, as aforesaid, or in proportion for any lesser quantity; every person or persons so offending, and being thereof lawfully convicted upon the oath of one or more credible witnesses or witnesses, shall forfeit, as aforesaid, to be recovered and distributed as is afterwards provided for by this act.

Not to extend  
to clothes  
made of vel-  
vet.

*Seet. 2.* " Provided, That nothing in this act contained shall extend, or be construed to extend to any clothes or wearing garments made of velvet.

Persons dwell-  
ing in gaols,  
&c. offending  
against this  
act, shall be  
subject to the  
penalties.

*Seet. 3.* And be it enacted by the authority aforesaid, That any person or persons inhabiting, or being in any gaol or house of correction, or within the rules or liberties of any gaol or house of correction, or shall inhabit or dwell in any privileged place, or within the liberties of the same, committing any offence or offences against this act, he, she or they so offending, as aforesaid, and being lawfully convicted of the same, as is before directed by this act, he, she or they shall be subject to the forfeitures and penalties as in this act mentioned; any law, statute, custom or thing to the contrary in any wise notwithstanding.

Prosecution in  
three months.

*Seet. 4.* " And be it enacted by the authority aforesaid, That all offences committed against this act, shall be prosecuted within three months after the same is committed or discovered.

Offences to be  
determined by  
justices of  
peace.

*Seet. 5.* " And be it enacted by the authority aforesaid, That all offences against this act shall be heard and determined by one or more of his majesty's justice or justices of the peace of the county, city, town or place where the same shall be discovered, or where such offender doth inhabit, such justice or justices being not concerned in the matter of the said complaint; upon the oath of one or more credible witness or witnesses, which oath such justice or justices is and are hereby impowered and required to administer: And all and every the said penalties and forfeitures, which shall happen by virtue of this act, shall be distributed and paid, after the charges of such conviction being first deducted; one moiety to him or them who shall inform or prosecute for the same, the other moiety to the poor of the parish, township or place where the offence shall be discovered;

On oath of  
one witness.

One half of  
the penalty to  
the informer,  
the other to  
the poor.

vered; and in case any offender shall neglect or refuse to pay any such penalties and forfeitures, being lawfully demanded, by the space of fourteen days next after conviction for such offence, as aforesaid, that then such justice or justices is and are hereby required to issue out one or more warrant or warrants under his or their hands and seals to the constable or constables of the parish, town or place where such offender doth inhabit, or can be found, to levy the same by distress and sale of the offender's goods, rendering the overplus (if any be) to the owner; and where no sufficient distress can be found, to commit the offender or offenders to the common gaol for the county, city, town or place, where such offender shall be found, there to be kept to hard labour for and during the space of three calendar months."

To be levied by distress, if not paid in 14 days after conviction.

For want of distress, offenders to be committed for three months.

*Sett. 6.* "Provided, That if any person or persons find him or themselves aggrieved by any order or warrant made by any justice or justices of the peace, upon any such conviction before him or them, as aforesaid, such person or persons may appeal to the general quarter-sessions to be holden for the county, riding, city or corporation, where such conviction shall be made, giving sufficient notice of such appeal; and the determination of such justices in such sessions shall be final; and the said justices shall allow such costs and charges to the party aggrieved as they shall think reasonable, to be levied and paid in such manner, as is usual in other cases of appeals from the orders of any justices of the peace to the quarter-sessions."

Persons aggrieved may appeal to quarter sessions;

whose determination shall be final; and may allow costs.

*Sett. 7.* And be it enacted by the authority aforesaid, That if any action or suit shall hereafter be commenced or prosecuted against any person or persons so sued or prosecuted, such person or persons may plead the general issue, and give this act and the special matter in evidence; and if the plaintiff shall become nonsuited, or forbear further prosecution, or suffer discontinuance, or a verdict pass against him, or judgment upon demurer, the defendant or defendants shall recover his or their treble costs, for which he and they shall have like remedy, as in cases where costs by law are given to defendants."

Persons sued may plead the general issue,

and shall recover treble costs.

*Sett. 8.* "And be it enacted by the authority aforesaid, That all clothes or wearing garments, which shall be made with buttons and button-holes of the same cloth, serge, drugget, frize, camlet or other stuffs, of which the said clothes or wearing garments are made, and shall be exposed to sale in any fair or market, or in any shop or ware-house, or in any dwelling-house, or other place whatsoever, the same shall be subject and liable to be forfeited and seized, and applied to the uses in this act mentioned, to be recovered as other forfeitures and penalties are by this act to be recovered."

Such clothes exposed to sale may be seized,

*Sett. 9.* "And be it enacted by the authority aforesaid, That if any taylor, or other person or persons, shall cause his or their apprentice or servants to make any clothes or wearing garments contrary to this act, that in such cases the said master-taylor, or such other person or persons which caused the said clothes or wearing garments to be so made, or shall be any ways entitled to the monies for making the said clothes or wearing garments made as aforesaid, shall be subject to the forfeitures and penalties to the penalties."

Taylor, &c. causing their apprentices, &c. to make clothes contrary to this act, shall be subject to the penalties.



To be taken as  
a publick act.

penalties in this act mentioned, to be had and recovered, as other forfeitures and penalties are to be recovered by this act; any thing herein contained to the contrary notwithstanding. And this act shall be taken and allowed to be a publick act in all courts within this kingdom; and all judges and justices of the peace are hereby required to take notice thereof, as such, without special pleading the same."

**Stat.** 7 *Geo. I. st. 1. c. 12.* [*A. D. 1720. intituled*] "An act for employing the manufactures, and encouraging the consumption of raw silk and mohair yarn, by prohibiting the wearing of button-holes made of cloth, serge or other stuffs."

8 Ann. c. 6.

"Whereas by an act made in the eighth year of the reign of her late majesty queen *Anne*, [intituled, *An act for employing the manufacturers by encouraging the consumption of raw silk and mohair yarn,*] suggesting therein, amongst other things, that the maintenance of many thousands of men, women and children, within this kingdom of *Great Britain*, depends on the making of silk, mohair yarn, and thread buttons and button-holes, with the needle; and that great number of throwsters, twistlers, spinners, winders, dyers and others are employed in preparing materials of which such buttons and button-holes are made, It was provided, That, from and after the five and twentieth day of *March* one thousand seven hundred and ten, no buttons or button-holes, made of cloth, serge, drugget, frize, camlet, or any other stuffs, should be made, set or bound on any clothes or wearing garments whatsoever, by any taylor or other person or persons whatsoever, on the forfeitures and the penalties in the said act contained: And whereas for making the said recited act more effectual, another act was made in the fourth year of his present majesty, [intituled, *An act for making more effectual an act made in the eighth year of the late queen Anne, intituled,*

4 *Geo. I. c. 7.*

"An act for employing the manufacturers by encouraging the consumption of raw silk and mohair yarn."] And whereas the said several acts have not effectually answered the good ends thereby proposed, and buttons and button-holes made of cloth, serge, drugget, frizes, camlet and other the said stuffs, are still usually made, set and bound on clothes and wearing garments, to the great impoverishment of the said manufacturers of needlework, buttons and button-holes, and other the said persons employed in preparing the materials thereof, and to the excessive increase of the poor, and if not prevented, may be the utter ruin of the said manufacturers, and many thousands of your majesty's subjects and their families, whose livelihoods do intirely depend thereupon: For remedy whereof, may it please your most excellent majesty, that it may be enacted; and Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the nine and twentieth day of *September*, which shall be in the year of our lord one thousand seven hundred and twenty-two, it shall not be lawful for any person or persons whatsoever, within the kingdom of *Great Britain*, to use

After 29 Sept.  
1722. No  
Person shall  
wear on any  
clothes buttons  
made of cloth,

or wear on any clothes, garments, or apparel whatsoever, any buttons or button-holes made of or bound with cloth, serge, drugget, frize, camlet, or any stuffs, whereof clothes or wearing garments are usually made; and that if any person or persons whatsoever, within the kingdom of *Great Britain*, shall use or wear any buttons or button-holes, made of or bound with cloth, serge, drugget, frize, camlet or other stuffs, as aforesaid, such person or persons, being thereof lawfully convicted by the oath of one or more credible witness or witnesses, or by confession of the party, in manner as is herein after mentioned, shall forfeit, for every dozen of such buttons or button-holes so used or worn, the sum of forty shillings, or in proportion for every lesser quantity of such buttons and button-holes; to be recovered and distributed as herein after is provided.

“ *Sec. 2.* “ And for the more easy conviction of offenders against this act, and for the more easy recovery of the penalties and forfeitures aforesaid, Be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any one or more of his majesty’s justices of the peace of the county, riding, city, town or place, where any offence shall be committed against this act, or where such offender shall inhabit, and such justice or justices are hereby required and enjoined, upon any complaint or information upon the oath of one or more credible person or persons (which oath such justice or justices is and are hereby empowered and required to administer) to summon the party or parties accused, and upon his, her or their appearance or contempt, to proceed to the examination of the matter of fact, and upon due proof made, either by confession of the party, or the oath or oaths of one or more credible person or persons, of any offence committed contrary to this act, to determine the same, and convict the offender or offenders thereof; and upon conviction to cause the said penalties or forfeitures, upon the offender or offenders refusing to pay the same on demand, at such time or times as the said justice or justices shall appoint, by warrant or warrants under his or their hands and seals, to be levied by distress and sale of the goods and chattels of such offender or offenders, rendering to him, her or them, the overplus, if any shall be, the charges of such distress and sale being thereout first deducted; and all and every the penalties and forfeitures under this act, shall be distributed and paid in manner following, (that is to say) One moiety thereof to him, her or them, on whose oath or oaths any person or persons shall be convicted of any offence against this act, and the other moiety to the poor of the parish where such offence or offences shall be committed.”

Conviction before one justice of peace.

Penalties to be levied by distress.

One moiety to the informer, the other to the poor.

“ *Sec. 3.* “ Provided nevertheless, That it shall and may be lawful to and for any party or parties aggrieved by the order, determination, or warrant of such justice or justices, as aforesaid, to appeal to the justices of the peace at the next general quarter-sessions, to be holden for the county, riding, city or place where the said offence or offences shall have been committed, giving eight days notice at the least, of such appeal to the prosecutor or prosecutors; which justices at the said sessions are hereby authorised and required to hear and determine the same, and their judgment therein shall be final.

Appeal to Quarter-sessions, whose judgment shall be final.

*Sec. 4.*

Prosecution in one month. *Seet. 4.* " Provided also, That all offences against this act shall be prosecuted within one month after such offence committed, and not after."

Not to extend to clothes of velvet. *Seet. 5.* " Provided also, That nothing in this act contained shall extend or be construed to extend to any clothes or wearing apparel made of velvet."

General issue, &c. *Seet. 6.* " Provided also, That if any action or suit shall hereafter be commenced or prosecuted against any person or persons so sued or prosecuted, as aforesaid, such person or persons may plead the general issue, and give this act and the special matter in evidence; and if the plaintiff shall become nonsuited, or forbear further prosecution, or suffer discontinuance, or a verdict to pass against him or her, or judgment upon demurrer, the defendant or defendants shall recover his, her or their treble costs, for which he, she or they shall have like remedy as in cases where costs by law are given to defendants."

Treble costs. *Seet. 7.* " And be it further enacted by the authority aforesaid, That this act shall be taken and allowed to be a publick act in all courts within this kingdom of *Great Britain*; and all judges and justices of the peace are hereby required to take notice thereof as such, without special pleading the same."

Publick act. *Seet. 7.* " And be it further enacted by the authority aforesaid, That this act shall be taken and allowed to be a publick act in all courts within this kingdom of *Great Britain*; and all judges and justices of the peace are hereby required to take notice thereof as such, without special pleading the same."

Lord Raym. 712. Hil. 13 Will. 3. Rex v. Roberts. An information was exhibited against the defendant for having made wooden buttons, contrary to the late act of parliament. Upon not guilty pleaded, it was tried before *Gould* justice at *Lincoln*, being justice of assize; and a special verdict was found there, *viz.* That all the button was of wood, but there was in it a shank of wire. And after argument by Mr. serjeant *Newe* for the king, and Mr. serjeant *Mundy* for the defendant, judgment was given for the king, *viz.* that this was a button of wood, notwithstanding the shank, which is no essential part of buttons; for buttons of silk and hair have no shanks. Adjudged accordingly *Pasch.*

2 Salk. 612. Pach. 5 Ann. 5 *Ann. B. R. Dunne qui tam, &c. vers. Hinchdy.* Debt upon the statute 10 W. 3. c. 2. for twelve dozen of buttons made *de ligno tantum* in imitation of, &c. The jury found the buttons were all wood but the shanks, which were brass, and that they were made in imitation, &c. and that they were buttons made *de ligno tantum*, &c. *Weld* said, that it now appeared the statute was applicable, and might have its effect upon other buttons, and that a penal law was to be construed strictly, and not by intendment. *Vide 2 Inst. 199. Plo. 47. a.* But the court resolved they were prohibited by the act; for the shank is no part of the button, but added to fasten it. And if buttons thus made in imitation, &c. by having a brass shank added, should be out of the act, it would be in every body's power to evade it. Adjudged.

## Cambricks.

**STATUTE** 18 *Geo.* 2. c. 39. [*A. D.* 1745. intituled] “An act for prohibiting the wearing and importation of cambricks and *French* lawns.”

“Whereas it is evidently for the advantage of this kingdom, that the wearing of cambricks and *French* lawns should be prohibited; Be it enacted by the king’s most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June*, which shall be in the year of our Lord one thousand seven hundred and forty-eight, it shall not be lawful for any person or persons whatsoever to wear in *Great Britain*, in any garment or apparel whatsoever, any cambrick or *French* lawn, under the penalty of forfeiting to the informer the sum of five pounds, of lawful money of *Great Britain*, for every such offence, being lawfully convicted thereof by the oath or oaths of one or more credible witness or witnesses, before any one or more justice or justices of the peace; which justice or justices is and are respectively authorized, and strictly enjoined and required, upon any complaint or information upon oath, exhibited or brought of any such offence committed contrary to this act, within six days after commitment thereof, to summon the party accused, and upon his or her appearance or contempt, to proceed to examination of the matter of fact; and upon due proof thereof made, either by voluntary confession of the party, or by the oath or oaths of one or more credible witness or witnesses (which oath or oaths the said justice or justices is and are hereby respectively empowered and required to administer) to hear and determine the same; and upon such conviction, to cause the said penalty, by warrant under his or their hand and seal, or hands and seals respectively, to be levied by distress and sale of the offenders goods and chattels, rendering the overplus (the charges of such distress and sale being first deducted); nevertheless it shall be lawful for the party aggrieved, to appeal to the justices of the peace at the next general quarter-sessions to be holden for the county, city, riding or place, where the said offence or offences shall have been committed, giving six days notice at least of such appeal to the prosecutor or prosecutors; which justices, at such general quarter-sessions, are hereby authorized and empowered to hear and determine the same, whose determination shall be final.”

*Sec.* 2. “And be it further enacted by the authority aforesaid, That if any person or persons shall, from and after the said twenty-fourth day of *June* one thousand seven hundred and forty-eight, vend, utter, sell or expose to sale any cambricks or *French* lawns, made or not made up, such person or persons so vending, uttering, selling or exposing the same to sale (except for exportation only) and shall thereof be convicted,

ted, shall forfeit and pay the sum of five pounds, to be recovered and levied as aforesaid."

The person wearing cambricks discovered the seller, shall be discharged.

*Sett.* 3. " Provided always, and it is hereby declared, That if any person or persons shall, from and after the said twenty-fourth day of *June* one thousand seven hundred and forty-eight, be prosecuted by this act for wearing in or on any garment or apparel, any cambricks or *French* lawns, and such person or persons shall discover upon oath, before any one or more justice or justices of the peace, the person or persons who sold such cambricks or *French* lawns to such person or persons so wearing the same, such person or persons so discovering as aforesaid, shall be, and is and are hereby freed and discharged of and from all and every such penalties and forfeitures, as aforesaid, for wearing such cambricks or *French* lawns; and the person and persons, so selling such cambricks or *French* lawns to such person or persons as shall wear the same, shall be liable to the penalties and forfeitures herein before laid and inflicted; and the same shall be recovered and levied, and disposed of in such manner, as the penalties and forfeitures which are inflicted by this act for wearing of cambricks and *French* lawns."

No cambricks, &c. to be imported till proof made that they are the property of his majesty's subjects.

If any alien hath interest therein, proof to be made that they were shipped for importation before May 10, 1745.

*Sett.* 4. " And it is further enacted by the authority aforesaid, That, from and after the tenth day of *May* one thousand seven hundred and forty five, no cambricks or *French* lawns shall be admitted to be imported or entered into any port of *Great Britain*, until after proof upon oath shall have been made by the importer, or if a *Quaker*, by affirmation, at the time of entering the same, before the proper officer or officers of the customs at the port of importation (which oath or affirmation such officer or officers are hereby impowered and required to administer) either that the same are the sole property of the importer, or of some other of his majesty's subjects, and that no alien or foreigner hath any property, interest or concern whatsoever therein; or otherwise, if any alien or foreigner hath any interest or property therein, then, and in that case, proof shall be given by the importer, to the satisfaction of the aforesaid officers of his majesty's customs, that the same were really and *bona fide* shipped in order for direct importation into *Great Britain*, on or before the said tenth day of *May* one thousand seven hundred and forty-five."

No foreign cambricks to be imported.

*Sett.* 5. " And be it further enacted by the authority aforesaid, That from and after the first day of *August* one thousand seven hundred and forty-five, it shall not be lawful for any person or persons whatsoever, to import or enter into any port of *Great Britain*, any foreign cambricks or *French* lawns, unless bills of loading be produced for the same, or such other proof or evidence be given to the commissioners of his majesty's customs, or to the chief officer or officers of the customs at the port of importation, as they shall think sufficient or require, that the said cambricks or *French* lawns were really and *bona fide* shipped for direct importation into *Great Britain*, on or before the said first day of *August* one thousand seven hundred and forty five."

Conditions on which cambricks, &c.

*Sett.* 6. " Provided always, That it shall and may be lawful to import or enter into any part of *Great Britain*, after the first day of *August* one thousand

thousand seven hundred and forty-six, any cambricks, *French lawns*, or other linen whatsoever, of the kind usually entered under the denomination of cambricks, upon the importer making oath, or if a Quaker, affirmation, that they are intended for exportation only, and that they are really and *bona fide* the property of the importer, or of some other of his majesty's subjects, and that no alien or foreigner hath any interest or property therein; and also upon the said importer giving sufficient security by bond, to the satisfaction of the commissioners of the customs, or the chief officer or officers thereof, at the port of importation, for the use of his majesty, his heirs and successors, in double the value of the goods so imported, such value to be ascertained by the oath or affirmation of the importer as aforesaid; and which bonds, oaths and affirmation respectively, the proper officers are hereby authorized and required to receive and administer, for payment of the sum of five pounds for each and every piece of such cambricks and *French lawns*, which shall not be exported out of this kingdom, within the term of three years, after the entry of the same; any thing to the contrary in this present act in any wise notwithstanding."

on proof that they are subjects property;

and security given that they shall be exported in 3 years.

*Stat.* 7. " Provided also, That in case any piece or pieces of cambrick or lawn so imported as aforesaid, shall by fire, or any other unavoidable accident, be lost or destroyed, then and in that case, and upon making proof of such loss, to the satisfaction of his majesty's commissioners of the customs, or of the chief officer or officers thereof, at the port of importation, the said commissioners, or chief officer or officers, are hereby authorized and required to remit to the said importer the said penalty of five pounds, payable for each and every piece not so exported as aforesaid; any thing to the contrary in this present act in any wise notwithstanding."

Pieces lost by fire, &c. not liable to the penalty.

*Stat.* 21 *Geo.* 2. c. 26. [*A. D.* 1748. *Intituled*] " An act for explaining, amending and enforcing an act made in the eighteenth year of the reign of his present majesty, intituled, *An act for prohibiting the Wearing and Importation of cambricks and French lawns.*"

" Whereas by an act made in the eighteenth year of the reign of his present majesty (intituled, " An act for prohibiting the wearing and importation of cambricks and *French lawns*) it is (amongst other things) enacted, That from and after the twenty-fourth day of *June*, which shall be in the year of our lord one thousand seven hundred and forty-eight, it shall not be lawful for any person or persons whatsoever to wear in *Great Britain*, in any garment or apparel whatsoever, any cambrick or *French lawn*, under penalty to the informer of five pounds of lawful money of *Great Britain*, for every such offence, being thereof lawfully convicted by the oath or oaths of one or more witnefs or witnesses, before any one or more justice or justices of the peace, to be levied and recovered as is therein directed; And whereas it is further enacted by the aforesaid act, That, from and after the said twenty-fourth day of *June* one thousand

18 *Geo.* 2. c. 36.

seven hundred and forty-eight, if any person shall vend, utter, sell or expose to sale any cambricks or *French* lawns, made, or not made up, such person or persons so vending, uttering, selling or exposing the same to sale (except for exportation only) who shall be thereof convicted, shall forfeit and pay the like sum of five pounds, to be recovered and levied as aforesaid: And whereas it is further provided and declared by the said act, That if any person shall, after the said twenty-fourth day of *June* one thousand seven hundred and forty-eight, be prosecuted for wearing such cambrick or *French* lawn, and such person shall discover upon oath, before any one or more justice or justices of the peace, the person or persons who sold such cambricks or *French* lawns to such person wearing the same, such person so discovering as aforesaid, shall be and is thereby discharged from all penalties and forfeitures inflicted by the said act; and that the person or persons so selling such cambrick or *French* lawns, shall be liable to the penalties and forfeitures laid and inflicted by the said act: And whereas some doubts have arisen, or may arise, whether by the words of the said recited act any penalty can be inflicted, either upon the wearer of any such cambrick or *French* lawn, who shall discover the vender or seller thereof, or upon the vender or seller so discovered by the wearer thereof, in case it shall appear that the said cambrick or *French* lawn was sold to such wearer, previous to the aforesaid twenty-fourth day of *June* one thousand seven hundred and forty-eight; by which means such cambricks and *French* lawns may happen to be worn for a great number of years, without any penalty whatsoever laid or inflicted, either on the wearer or seller thereof, contrary to the true intent and meaning of the said act, so evidently advantageous to this kingdom: And whereas it may be difficult for many persons to ascertain upon oath, where or from whom such cambricks or *French* lawns were bought, which have been for any considerable time in their possession: For the avoiding therefore of all such doubts and difficulties as aforesaid, Be it enacted and declared; and it is hereby enacted and declared by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person or persons; who after the twenty-fourth day of *June* one thousand seven hundred and forty-eight, and before the twenty-fifth day of *March* one thousand seven hundred and forty-nine, shall be prosecuted for wearing in or on any garment or apparel, any cambricks or *French* lawns, shall make an affidavit, or bring sufficient proof, or by the oath or affidavit of the husband or wife of the party accused, or by the oath or affidavit of any other credible person, before one or more justice or justices of the peace, that the same was bought on or before the twenty-fourth day of *June* one thousand seven hundred and forty-eight, such wearer shall be and is hereby discharged from any penalty or forfeiture inflicted by the said act.

Persons prosecuted for wearing cambrick, producing proof that the same was bought before 24 June 1748, discharged.

The vender convicted of selling cambrick after

*Sett* 2. " And be it further enacted by the authority aforesaid, That at any time from and after the twenty-fourth day of *June* one thousand seven hundred and forty-eight, if any wearer of cambrick or *French* lawn

lawn, who shall be prosecuted by virtue of the said in part recited act <sup>24 June 1748, to be</sup> for wearing the same, and who shall have purchased the same after the <sup>liable.</sup> twenty-fourth day of *June* one thousand seven hundred and forty-eight, shall discover, to the satisfaction of the justice or justices, the vender or feller of such cambrick or *French* lawn, and likewise that the same was sold by such vender or feller after the said twenty-fourth day of *June* one thousand seven hundred and forty-eight, so as such vender or feller be convicted, and become liable to the penalties and forfeitures laid and inflicted by the said act, then, and not otherwise, such wearer so prosecuted shall be and is hereby discharged from any penalty or forfeiture laid or inflicted by the said act; any thing in this or in the said act to the contrary notwithstanding.

*Secl. 3.* " And it is hereby further enacted by the authority aforesaid, <sup>Penalties to go to the informer.</sup> That whenever any person informed against for wearing such cambrick or *French* lawn shall be excused from the penalty by discovering the vender or feller thereof, the penalty to be levied and inflicted on such vender or feller, in every such case, shall go and belong to the person who informed against the wearer thereof.

*Secl. 4.* " And whereas the penalties, to which wearers of cambricks or *French* lawns are made subject, either by the said former law, or this present act, cannot, in case the person convicted be a feme covert, be levied by law on the goods and chattels of her husband, by means of which the intent of the said former and of this present act may happen to be evaded: For remedy thereof, be it further enacted by the authority aforesaid, <sup>Penalties incurred by a feme covert, to be levied on the goods of the husband.</sup> That in all cases where the offender shall, at the time of the offence committed, or at the time of the conviction, happen to be a feme covert, living with her husband, the penalties which should be levied on the goods and chattels of such offender, in case she had been then unmarried, shall and may be levied on the goods and chattels of her husband; any law to the contrary notwithstanding.

*Secl. 5.* " And be it further enacted by the authority aforesaid, <sup>Milliners making up cambricks, liable to the penalties,</sup> That if any milliner, sempstress, or other person whatsoever, shall for hire, from and after the said twenty-fourth day of *June* one thousand seven hundred and forty-eight, make up any cambrick or *French* lawn for, in or upon any garment or wearing apparel, such milliner, sempstress, or other person, shall be liable to the like penalties and forfeitures, as the sellers of cambrick or *French* lawn are liable to, by virtue of the said act of the eighteenth year of his majesty's reign, to be prosecuted and levied; and the said penalties and forfeitures to be applied in the like manner, as the several penalties and forfeitures are directed to be prosecuted, levied and applied by this or the said in part recited act.

*Secl. 6.* " And be it further enacted by the authority aforesaid, <sup>Quaker's affirmation to be taken.</sup> That in all cases wherein by this act an oath is required to be made and taken, the solemn affirmation of any person, being a Quaker, shall and may be accepted and taken in lieu thereof; and that every instance of wilful and corrupt false affirming shall subject such person to the same penalties and forfeitures, as he would by law have been liable to, if the same matter had been declared upon oath or affidavit directed by this act." <sup>Penalty of false affirming.</sup>



Stat. 32 Geo. 2. c. 32. [A. D. 1758. intituled] "An act for the more effectual preventing the fraudulent importation of cambricks and French lawns."

Whereas the acts made in the eighteenth and twenty-first years of the reign of his present majesty, for prohibiting the wearing and importation of cambricks and French lawns, have not been effectual to prevent the fraudulent importation thereof; therefore, for the amending and enforcing the said acts, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of *August* one thousand seven hundred and fifty-nine, no cambricks, French lawns, or other linens whatsoever, of the kind usually entered under the denomination of cambricks, shall be imported, or brought into any port or place whatsoever within *Great Britain*, unless the same be packed in bails, cases or boxes, covered with sackcloth or canvas, each of which bales, cases or boxes shall contain one hundred whole pieces, or two hundred demi or half pieces of such cambricks or French lawns."

No cambricks or French lawns to be imported but in bales, &c. covered with cloth, containing each 100 Whole pieces, or 200 Half pieces; on penalty of forfeiture thereof.

Se<sup>t</sup>. 2. "And be it further enacted, That in case any cambricks or French lawns shall be imported in any other form or manner, or in any less quantity, than is herein before mentioned and allowed, in each and every of the said cases, the cambricks or French lawns so imported, or found on board any ship or vessel in this kingdom, shall be forfeited, and shall and may be seized by any officer or officers of the customs."

The same to be imported for exportation only, and to be lodged in the king's warehouses, and delivered out under like security and restrictions as prohibited East India goods. One half of the old subsidy payable only upon the importation. What goods shall be in private custody, are to be deposited by 1 *August* next in the king's Warehouses;

Se<sup>t</sup>. 3. "And be it further enacted by the authority aforesaid, That, from and after the said first day of *August* one thousand seven hundred and fifty-nine, cambricks and French lawns shall be imported for exportation only, and shall be lodged in such warehouse belonging to his majesty, his heirs and successors, as the commissioners of the customs, or any three or more of them, for the time being, shall appoint; and shall not be delivered out of such warehouse, but under the like security and restrictions as *East India* goods, prohibited to be consumed in *Great Britain*, are now liable to."

Se<sup>t</sup>. 4. "And be it further enacted by the authority aforesaid, That from and after the said first day of *August*, there shall be no customs or duties whatsoever paid, or secured to be paid, for any cambricks or French lawns imported, or which shall be imported, and deposited in such warehouse as aforesaid, other than one half of the old subsidy, which is to remain by law, after the goods are exported again."

Se<sup>t</sup>. 5. "And be it further enacted by the authority aforesaid, That all and every person and persons having in their custody any cambricks or French lawns imported before the said first day of *August*, for the exportation whereof, within the time limited by the law, bond has been given, shall, on or before the first day of *August* next, bring and deposit, or cause to be brought and deposited, all such cambricks and French lawns, in such warehouse as shall be approved of by the commissioners aforesaid for that purpose;

purpose; and upon the depositing of such goods in such warehouse as and the Bonds  
aforesaid, the bonds for the exportation thereof shall be delivered up to thereupon to  
the person or persons who gave the same, or his or their heirs, executors, be delivered  
administrators or assigns, who shall likewise receive at the same time from up,  
the collector, or other proper officer of the customs at the port where such and the draw-  
bond was given, all the duties which such goods would be intitled to draw back upon ex-  
portation: And such goods shall not be again delivered out paid,  
of the said warehouse but for the exportation thereof, in like manner and the goods  
as if the same had been deposited therein at the importation: And in case not to be deli-  
any person or persons shall sell, offer or expose to sale, or after the said gain but for  
first day of *August* have in his, her or their custody or possession, for that exportation.  
purpose, any cambricks or *French* lawns (other than in such warehouse as Goods ex-  
shall be approved of by the said commissioners as aforesaid) the same shall posed to sale,  
be forfeited, and shall be liable to be searched for and seized in like man- or found in  
ner as other prohibited and uncustomed goods are; and every such person private pos-  
shall also forfeit two hundred pounds, over and above all other penalties session, after  
and forfeitures inflicted upon such person or persons by any former the said day,  
act." may be seized,  
and the of-  
fender to for-  
feit 200*l.* ex-  
tra.

*Seet.* 6. "And be it further enacted by the authority aforesaid, That if any doubt or question shall arise with respect to the species or quality of the said goods seized by virtue of this act, or where the same were manu- In doubts  
factured, the proof shall lie on the owner or owners thereof, and not upon concerning  
the prosecutor; any law, custom or usage to the contrary notwithstanding the species or  
quality, &c.  
of the goods,  
*Onus probandi*  
to lie on the  
owner.

*Seet.* 7. "And be it further enacted by the authority aforesaid, That all Goods seized  
the goods seized by virtue of this act, or any other cause of forfeiture, shall to be carried  
upon seizure thereof be carried to the next custom-house, and after con- to the next  
demation in due course of law, shall not be consumed or used in this king- custom-house,  
dom, but shall be exported; and shall not be sold or delivered out of such and after con-  
warehouse, otherwise than on condition to be exported, nor until the buyer demation, to  
or buyers shall have given security for the exportation thereof, and ob- be exported.  
serving all the regulations and restrictions prescribed for the exporta-  
tion of *East India* goods prohibited to be consumed or used in *Great Britain*."

*Seet.* 8. "And be it further enacted by the authority aforesaid, That all Recovery and  
the penalties and forfeitures by this act imposed, shall and may be sued application of  
for and recovered in any of his majesty's courts of record at *Westminster*, or the penalties.  
in the court of *Exchequer* at *Edinburgh*, respectively, by action, bill, plaint  
or information, in the name of his majesty's attorney general, or in the  
name of his majesty's advocate in *Scotland*, or in the name or names of  
some officer or officers of the customs; and that one moiety of every such  
penalty and forfeiture shall be to his majesty, his heirs and successors, and  
the other moiety thereof to such officer or officers of the customs who shall  
seize, inform or prosecute for the same."

*Seet.* 9. "And be it further enacted by the authority aforesaid, That Upon actions  
entered for  
pecuniary pe-  
nalties, a ca-  
pias in the first  
process to be  
issued;  
upon every action, bill, plaint or information entered and filed as afore-  
said,

and the defendants may give bail thereto, &c.

said, for any pecuniary penalty imposed by this act, a *capias* in the first process shall and may issue, specifying the sum of the penalty sued for; and the defendant or defendants shall be obliged to give sufficient bail or security by natural-born subjects or denizens, to the person or persons to whom such *capias* shall be directed, to appear in the court out of which such *capias* shall issue, at the day of the return of such writ, to answer such suit or prosecution; and shall likewise, at the time of such appearance, give sufficient bail or security, by such persons as aforesaid in the said court, to answer and pay all the forfeitures and penalties incurred for such offence or offences, in case he, she, or they shall be convicted thereof, or to yield his, her or their body or bodies to prison.

General issue.

*Sett.* 10. "And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced against any person or persons for any thing done in pursuance of this act, the defendant or defendants in such action or suit may plead the general issue, and give this act, and the special matter, in evidence, at any trial to be had thereupon; and that the same was done in pursuance and by the authority of this act: And if it shall appear so to have been done, then the jury shall find for the defendant or defendants; and if the plaintiff shall be nonsuited, or discontinue his action after the defendant or defendants shall have appeared; or if judgment shall be given upon any verdict or demurrer against the plaintiff; the defendant or defendants shall recover treble costs, and have the like remedy for the same, as defendants have in other cases by law.

Treble costs.

*Stat.* 4 *Geo.* 3. c. 37. [*A. D.* 1764. *Intituled*] "An act for the better establishing a manufactory of cambricks and lawns, or goods of the kind usually known under those denominations, now carrying on at *Winchelsea*, in the county of *Sussex*; and for improving, regulating, and extending the manufacture of cambricks and lawns, or goods of the kind usually known under those denominations, in that part of *Great Britain* called *England*."

Preamble.

"Whereas the establishing a manufacture of linens in *England*, of the kind usually known under the denomination of cambricks and *French* lawns, will be of great utility to this kingdom, as well by the employment of a great number of poor, as by preventing the illegal importation of foreign cambricks and *French* lawns: And whereas a manufactory of cambricks and lawns hath been already set up at *Winchelsea* in the county of *Sussex*, and large quantities of such goods have been made there, and may be made in other parts of this kingdom, equal, if not superior, in quality to those made in foreign parts; and many persons are desirous of subscribing large sums towards the support and extension of the said manufactory (for the effectual carrying on of which a large fund will be necessary), but are apprehensive that difficulties may arise, as well in recovering debts which may grow due to the proprietors of the said manufactory, as in defending suits or actions which may be brought or commenced

menced against them for any matter or thing relative thereto, as, by law, all the several proprietors or subscribers to the said manufactory must, in such cases, both sue and be sued; implead and be impleaded, by their several and distinct names and descriptions; and therefore, for the more easily carrying on the manufacture, and avoiding the difficulties aforesaid, are desirous of being incorporated and having a common seal and name by which they may sue and be sued; and many persons are desirous of subscribing large sums thereto, but are deterred from so doing, lest they may thereby become liable, in case the said manufactory should not be successful, to pay large sums of money over and above the sum by them subscribed, to make good the debts to be incurred therefrom; and many persons who are not now liable to become bankrupts, within the intent and meaning of any of the laws now in force concerning bankrupts, are likewise fearful of subscribing money to carry on the said manufactory; as, by becoming subscribers to and part-owners thereof, they may be liable to have commissions of bankrupt issued against them as traders: and whereas some doubts have arisen, whether such cambricks and lawns, so made and fabricated in *England*, can, consistent with the laws now in being relating to cambricks and *French* lawns, be legally sold, disposed of, and used in *Great Britain*; may it therefore please your majesty that it may be enacted; and Be it enacted by the king's most excellent majesty, by and with the consent of the lords spiritual and temporal and commons, in this present parliament assembled, and by the authority of the same, That it shall and may be lawful to and for any person or persons whomsoever, to make and vend, or cause to be made and vended, all such linen goods called cambricks or lawns, or goods of the kind usually known by or under either of those denominations, as shall be made in this kingdom, and stamped in the manner herein after directed; and that such lawns or cambricks, or other such like goods so made and stamped, may be exposed to sale, and worn by any person or persons in this kingdom; any law, usage or custom to the contrary notwithstanding.

Any person may make and sell cambricks and lawns in this kingdom,

SECT. 2. " And whereas the sole right and prerogative of granting charters of incorporation (not being such as are repugnant to any law or statute of this kingdom) doth belong to your majesty; Be it therefore enacted by the authority aforesaid, That it shall and may be lawful to and for his majesty, his heirs and successors, by one charter, indenture, or letters patent, under the great seal of *Great Britain*, to declare and grant, That the right honourable the earl *Verney* in the kingdom of *Ireland*, the right honourable *Charles Townshend*, Sir *George Colebrooke* baronet, Sir *Lawrence Dundas* baronet, *Arnold Nesbitt* esquire, *Peregrine Cust* esquire, *George Prescott* esquire, *Barlow Trecothick* esquire, *Gilbert Heathcote* esquire, *Moses Franks* esquire, master *Edward Bridgen*, master *Benjamin Barnett*, master *William Grace*, master *Thomas Bidwell*, and every other person or persons who shall hereafter either in their own right, or as executors, administrators, successors or assigns, in right of any other person or persons, become proprietors of, or interested in, any part or share of the joint capital stock or fund herein after mentioned, shall be one distinct and separate body politick and corporate, in deed and

The king may incorporate the persons herein named (the present subscribers)

by the name of The English L. n. n.

Company,  
with such  
power of re-  
vocation as to  
his majesty  
shall seem  
meet;  
They may  
chuse direct-  
ors, &c.

in name, by the name and stile of *The English Linen Company*, or such other name as his majesty shall think proper; and that such corporation shall have perpetual succession, subject to such power of revocation as to his majesty shall seem meet; and that such corporation shall have power, from time to time, to chuse ten directors, and all proper officers and servants, for the better management of the affairs of the said corporation, in such manner, and under such restrictions and qualifications, as are herein after directed, or such as shall be prescribed in that behalf in and by such charter; nevertheless the first directors of the said corporation shall and may be appointed by his majesty in and by the same charter; and that the said first directors shall continue in their respective offices from the time of their appointment by his majesty, until the first *Wednesday in March* next after such appointment; and all subsequent directors shall continue in their respective offices for one year from the time of their respective appointments; and in case of death, removal, or disqualification, be supplied in such manner as herein after is directed; and that the said corporation shall and may have and use a common seal for the business only of the said corporation; and such seal, from time to time, may break, change, make new or alter, as shall be found most expedient; and that the said corporation shall be able and capable in law, to purchase, take, and enjoy, messuages, lands, tenements or hereditaments, not exceeding the value of five hundred pounds *per annum*, and to grant, alien, demise, or dispose of, the same, or any part thereof, at their free wills and pleasures; and in their corporate name, shall be able and capable in law, to sue and implead, be sued and impleaded, answer and be answered, in any court of record, or elsewhere, in all causes and actions whatsoever, for, touching or concerning, such corporation, or the manufactory by them carried on as aforesaid.

and purchase  
lands, &c.  
not exceeding  
the value of  
500 l. per an-  
num;

may sue and  
be sued;

and may raise  
a capital, not  
exceeding  
100,000 l.

Subscribers  
intitled to a  
share of capi-  
tal, in propor-  
tion to their  
subscriptions,

*Secl. 3.* " And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for such corporation, when constituted, to raise a capital joint stock, to be applied for the carrying on the said manufacture, and effecting the purposes of the said charter, not exceeding one hundred thousand pounds of lawful money of *Great Britain*, at such times, and in such proportions, as at any general court or courts of such corporation, to be holden pursuant to the directions of this act, or of such charter, shall be directed, either by taking subscriptions from particular persons (being or not being members of such corporation) for advancing money for that purpose, according to the orders of such general courts respectively, or by calls of money from the members of the said corporation for the time being, or such other methods as the said general courts shall think expedient for making up the said capital; and that all and every person or persons, by or from whom any subscriptions shall be accepted, or payment made, pursuant to any order or orders of the said general courts, towards raising the said capital stock, their executors, administrators and assigns shall be intitled to a share of the said capital stock, in proportion to the money which they shall contribute, and to such interest thereon, and also to such share of the profits and advantages attending the said capital stock, and payable at such times, and in such proportions, as shall be directed and agreed upon by the said

said corporation at any of their general courts; and such subscriber or subscribers, not being then a member or members of such corporation, upon making their several subscriptions and payments in manner herein after directed, shall be admitted, and are hereby declared to be, members thereof; which said subscriptions, and all other subscriptions to the said capital stock or fund of the said corporation, shall be distinctly and separately entered in a proper book or books to be provided for that purpose, and signed by the respective person or persons making such subscriptions; and the sums subscribed shall be entered in such book or books, in words at length, and also in figures, together with the day of the month and year on which such subscriptions shall respectively be made; and all and every such subscription and subscriptions shall be made in the presence of, and attested by, one or more witnesses or witnesses, who shall, by order of the said directors, have the custody of the said book.

and to be members of the corporation.

Subscriptions to be entered, signed, and attested.

SECT. 4. "Provided always, and be it enacted by the authority aforesaid, That it shall and may be lawful to and for his majesty, his heirs and successors, by warrant under his or their sign manual, from time to time, to empower such corporation to enlarge the capital stock of such corporation, from time to time, as the affairs of the said corporation shall require, on the like terms and conditions with the original capital.

The king may grant power to enlarge the capital.

SECT. 5. "And be it further enacted by the authority aforesaid, That all and every person and persons who shall subscribe any sum or sums of money for or towards raising such capital stock as aforesaid, shall answer and pay all such sum and sums of money, which he or they shall so subscribe, unto the directors of the said corporation for the time being, or to the cashier of the said corporation for the time being, or to such other person or persons who shall be authorized to receive the same in manner following; that is to say, one fourth part (the whole in four equal parts being divided) of every such sum so subscribed, shall be paid down at the time of making each subscription; and the remaining three fourth parts thereof at such times, and in such proportions, as any court or courts of directors of the said corporation shall think proper to call for or demand the same; notice of every such call or demand having been first published in the *London Gazette*, ten days at least before the day limited and appointed for the making of any payment, pursuant to any such call or demand: and if any person or persons, who shall have so subscribed as aforesaid, do not pay down one full fourth part of all such sum or sums as he or they shall subscribe, upon or at the time of his or their subscription, then every such subscription, without such payment, shall be utterly void and of none effect; and if any person or persons, who shall have subscribed, as aforesaid, his or their executors, administrators or assigns, having paid, in manner aforesaid, any part or parts of the sum or sums so by him or them subscribed, shall make default in any of the subsequent payments which shall be called for or demanded, in manner aforesaid, for the space of ten days after the time or times in such notice or notices, as aforesaid, limited and appointed for the payment of such calls respectively; then, and in every such case, one moiety or half part of the first sum paid by such person or persons, or his or their respective subscription,

Subscribers to pay a fourth at the time of subscribing,

and the remainder at such calls as the directors shall appoint. 10 days notice of every call to be published in the *London Gazette*. On neglect of first payment, subscription to be void; and on neglect of subsequent payments, one half of the first to be forfeited, &c.

shall be lost and forfeited to the said corporation; and the share or interest of all and every such person or persons so making default of and in the capital stock of the said corporation, and the interest and profits which he or they would otherwise have been intitled to receive therefrom, shall be reduced, lessened, or proportioned, according to the money actually paid upon every such subscription respectively, after an abatement or deduction of one moiety or half part of the first payment to be forfeited as aforesaid.

Directors to appoint a house in or near London or Westminster to transact their business. Directors to be a court, and nominate all officers and servants;

and to take apprentices.

A general annual court to be held the first Wednesday in March, for electing directors.

*Señ. 6.* " And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for his majesty, in and by such charter, to empower the court of directors of the said company or corporation for the time being, and such court of directors shall and may, from time to time, fix upon and appoint a proper place or house in or near the cities of *London* or *Westminster*, for the transacting the affairs and business of the said company; and that the directors in the said charter named, and their successors, or any five or more of them, shall be and be called a court of directors, and have full power and authority to act as such; and that it shall and may be lawful to and for the said court of directors to meet as often as they shall think necessary or proper; and they are hereby authorized and empowered to nominate and appoint such officers and servants, or other persons, as shall be any ways necessary to be employed in the management and carrying on the affairs of the said company, and from time to time to dismiss such officers and servants from their employ, and nominate and appoint new ones in their stead or steads, or to encrease or lessen their number, as such court of directors shall from time to time think proper, and to give such orders and directions for the management of the affairs of the said corporation as they shall think proper, and are consistent with the general rules and orders made by the said corporation; and to take, from time to time, any number apprentices to be employed in the manufactory carried on by the said company, upon such terms and conditions, and for such number of years, as to them shall seem meet; and to affix the common seal of the said corporation to a counter-part of the articles of agreement, or indentures of apprenticeship, made with such apprentices respectively, their parents, guardians or other persons authorized to put out and bind such apprentices respectively.

*Señ. 7.* " And be it further enacted by the authority aforesaid, That there shall be one general annual court of the said corporation, held on the first *Wednesday* in *March* in every year, and as many other general courts as shall be necessary; which said general courts shall be held at any house or place in the cities of *London* or *Westminster*, which shall be appointed by the said court of directors; of which said general court, or any other general courts to be called by any court of directors of the said company, and which general courts such directors are hereby authorized to hold and call as often as such court of directors shall think the same necessary, ten days notice at the least shall be given in the *London Gazette*; and that said general court, held on the first *Wednesday* in *March* yearly, shall be chosen out of and from the members of the said corporation, by the majority of votes of all the members then present.

*Señ.*



*Sec. 8.* " And be it further enacted by the authority aforesaid, That no <sup>Qualifications</sup> person shall be capable of being elected into, or exercising the office of, a <sup>of directors,</sup> director of the said corporation but under the qualification following, (that is to say) That the directors of the said corporation shall severally be possessed of a share or interest in the said stock in their own right respectively, not less than five hundred pounds capital ; and that the directors shall not continue in their respective offices any longer than they shall respectively continue to be possessed of the said share and interest in the said capital stock, in his or their own name and right respectively ; and that no person shall be qualified to vote at any general court, who shall not then be possessed of a share or interest in the said capital stock, to the amount of two hundred pounds at the least in his own right ; and that such person, <sup>and voters,</sup> who in his own right shall be possessed of five hundred pounds capital <sup>and the num-</sup> stock, shall have two votes at such general court ; and that such person <sup>ber of votes</sup> who shall be possessed in his own right of one thousand pounds capital <sup>they may</sup> stock, shall have three votes at such general court ; but no person shall <sup>have.</sup> have more than three votes upon any account whatsoever ; and if such share or interest of any proprietor in the said capital stock shall be at any time afterwards diminished from the proportion herein before ascertained, that then the same shall be no longer a qualification for voting in any general court."

*Sec. 9.* " And be it further enacted by the authority aforesaid, That all <sup>Members vo-</sup> proprietors shall, (if required) before they vote at any court, take an oath <sup>ting, to swear</sup> in the form which shall be approved of by a general court, to be admi- <sup>to their quali-</sup> nistered to them by one of the directors (who are hereby authorized and <sup>fications, if</sup> impowered to administer the same, or to direct such oath to be admini- <sup>required.</sup> stered by any other person or persons in his or their presence) declaring their property, share, or interest in the capital stock of the said corporation, and the *quantum* thereof, and that the same, or any part thereof, is not in trust for any other person or persons, and that no person shall be admitted to vote at any such court who shall refuse to take such oath ; and all offi- <sup>Officers, &c.</sup> cers and servants of the said corporation shall, if required by the court of <sup>to be sworn</sup> directors, before they enter on their respective offices, likewise take an <sup>according to</sup> oath in the form which for that purpose shall be approved by a general <sup>the form ap-</sup> court of the said corporation, to be administered by the directors of the <sup>proved by a</sup> said corporation, or any one of them, for the due and faithful discharge of <sup>general court ;</sup> their respective offices ; which oath such directors, or any one of them, are hereby authorized and impowered to administer, or direct the same to be administered by any other person or persons in his or their presence ; <sup>refusing or</sup> and in case any such officer or servant shall refuse or neglect to take such <sup>neglecting to</sup> oath for the space of ten days after he or they shall be chosen or appointed <sup>take such oath</sup> to any such office or offices as aforesaid, if required, such choice or ap- <sup>for 10 days,</sup> pointment shall be void, and a new election or appointment made. <sup>election void.</sup>

*Sec. 10.* " And be it further enacted by the authority aforesaid, That <sup>General courts</sup> the court of directors of the said corporation for the time being shall be <sup>to be called on</sup> obliged, upon demand made to them by any ten or more members of the <sup>demand of cer-</sup> said corporation, who shall in the whole, or together, be possessed of <sup>tain subscri-</sup> not <sup>bers ;</sup> less



on refusal,  
they may call  
such court  
themselves.

General court  
may displace  
directors.

No member  
liable to any  
debt of the  
corporation,  
further than  
his share in  
the capital.

If the corpo-  
rate debts  
shall exceed  
the value of  
the capital  
undivided,

or if they re-  
duce their ca-  
pital, so that  
their stock  
shall not be  
sufficient to  
pay their  
debts;  
Persons re-  
ceiving any  
dividend by  
which the ca-  
pital shall be  
reduced, are  
to be person-  
ally liable to  
make good  
such deficien-  
cy, so far as  
the dividends they shall have received shall extend.

less than five thousand pounds in the capital or joint stock of the said corporation, such demand being made in writing, and signed by the members demanding the same, and delivered at a court of directors to any one member of such court then present, to call a general court; and upon such court of directors refusing, or for the space of ten days neglecting so to do, the members demanding such court shall be at liberty to call and hold such general court, upon the like notice as should have been given by the said court of directors; and any general court, either called by the court of directors of the said corporation, or by any of the members or proprietors of the said corporation, in manner aforesaid, shall have full power and authority, and are hereby fully authorized and empowered to remove or displace any director, for misbehaviour, breach of trust, or other just cause, and to elect a new director or directors in his or their stead, in the same manner as if he or they was or were dead, or had disqualified himself or themselves, or his or their office, trust or employ was in any other manner become void.

*Sett. 11.* " And be it further enacted by the authority aforesaid, That no member or members of the said corporation, or any person or persons having the conduct or direction of the said manufactory, his or their heirs, executors or administrators, lands or hereditaments, goods, chattels or effects, other than his or their share or shares in the capital stock and effects of the said corporation, shall be liable or subject to the payment of any debt or debts contracted by or on account of the said corporation; or the manufactory carried on by the said corporation, in any other manner than is herein after directed and provided.

*Sett. 12.* " Provided always, and be it enacted by the authority aforesaid, That if the sum total of all the debts which the said corporation shall owe at any one time to any person or persons, bodies politick or corporate, shall exceed the value of the principal or capital stock and effects of the said company or corporation, which at such time shall be and remain to the said corporation undivided; or if the said corporation, by any dividend or dividends whatsoever, either in the name of interest, or otherwise, to be made amongst themselves, or in their private or personal capacities, shall reduce or lessen their joint stock, principal or capital, so that the value of their joint stock, principal or capital shall not be sufficient to answer their just debts then remaining unpaid; in every such case the particular members of the said corporation, and every of them respectively, who in their private or personal capacities shall receive any share or dividend of the capital or stock of the said corporation, by which the capital stock of the said corporation shall be so reduced or lessened, shall be severally liable, and they are hereby made liable, so far as their respective shares so by them respectively received upon such dividend or dividends shall extend, to pay and satisfy the debts which shall remain due and unpaid by the said company or corporation; and the person or persons, bodies politick or corporate, to whom such debts shall be due and owing, shall and may sue for and recover the same; any thing in this act contained to the contrary thereof in any wise notwithstanding.

*Sett.*

*Seet. 13.* "And be it further enacted by the authority aforesaid, That no person being or becoming a member of, or subscriber to the said corporation, for carrying on the said manufacture in pursuance of this act, shall, by means of becoming a member of, or subscriber to, or in respect of his share or interest in the capital stock of the said corporation, be, or be adjudged liable to be a bankrupt, within the intent or meaning of all or any of the statutes made against or concerning bankrupts; nor shall the capital stock or effects of the said corporation, or the share or interest of any particular member therein, be liable to any foreign attachment whatsoever; any law, usage or custom to the contrary notwithstanding."

Members not  
liable to bank-  
ruptcy,

nor the effects  
of the com-  
pany, or any  
member's  
share, liable  
to foreign at-  
tachment.

*Seet. 14.* "And be it further enacted by the authority aforesaid, That the particular share of every member in the capital stock or fund of the said corporation, and all lands, tenements, hereditaments, and estates whatsoever, held by or in trust for them or their successors, shall, from time to time, be assignable, transferrable and deviseable; but no member or members of the said corporation shall be at liberty to sell or assign his or their share or interest therein, till after the expiration of seven years, from the time of the constitution of the said corporation; but if such member or members shall die, or become bankrupt, then the share and interest of such member or members so dying, or becoming bankrupt, of and in the capital stock of the said corporation, shall and may be assigned and transferred by his or their executors or administrators, assignee or assignees, at any time within the said term of seven years, in like manner as the same might have been done, had the said term of seven years been fully expired; and all the right, title, interest, claim and demand of each and every particular member of the said corporation, in or to the capital stock and effects whatsoever of the said corporation, and the gains and increase thereof, shall be, and be adjudged, taken, accepted, in construction of law, by all judges, and in all courts of law and justice, and in all places whatsoever, to be a personal and not a real estate, and shall go to the executors or administrators, or other legal representatives intitled to the personal estate of the person or persons dying possessed thereof, or intitled thereunto, and not to the heirs of such person or persons; any law, statute, usage or custom whatsoever to the contrary notwithstanding."

Shares to be  
assignable; but  
not till seven  
years from the  
constitution of  
the corpora-  
tion, unless in  
case of death  
or bank-  
ruptcy.

members  
shares, &c.  
to be personal  
estates.

*Seet. 15.* "And be it further enacted by the authority aforesaid, That if any person or persons shall forge or counterfeit the common seal of the said corporation, to be established in pursuance of this act, or shall forge, counterfeit or alter any deed, bill, bond or obligation, under the common seal of the said corporation, or shall offer to dispose of, or pay away any such forged, counterfeited or altered bill, bond or obligation, knowing the same to be such, or shall demand any money therein mentioned or pretended to be due thereon, or on any part thereof, of and from the said corporation, or any members, officers or servants thereof, knowing such bill, bond or obligation to be forged, counterfeited or altered, with intent to defraud the said corporation, or their successors, or any other person or persons whomsoever: every person so offending, and being

Forging the  
seal, &c. of  
the corpora-  
tion, felony.

convicted

convicted thereof in due form of law, shall be judged guilty of felony, and shall suffer as in cases of felony, without benefit of clergy."

Breaking into a shop, &c. with intent to steal or destroy, &c. any material or implements declared to be felony.

*Sett.* 16. "And be it further enacted by the authority aforesaid, That if any person or persons shall by day or night break into any house, shop, cellar, vault or other place or building, or by force enter into any house, shop, cellar, vault, or other place or building, with intent to steal, cut or destroy any linen yarn, or any linen cloth, or any manufacture of linen yarn belonging to any manufactory, or the looms, tools or implements used therein; or shall wilfully or maliciously cut in pieces or destroy any such goods, either when exposed to bleach or dry; every such offender, being thereof lawfully convicted, shall be judged guilty of felony, and shall suffer as in cases of felony, without benefit of clergy."

Cambricks and lawns made in England after 10 day of May 1765, to be sealed at both ends.

*Sett.* 17. "And be it further enacted by the authority aforesaid, That all cambricks and lawns, or goods of the kind usually known under either of those denominations, which from and after the tenth day of May, now next ensuing, shall be wove or fabricated in *England*, or the principality of *Wales*, shall be marked or sealed at each end of every piece with such mark or seal, and by such officer or officers, as the commissioners of excise in *England* shall direct or appoint for that purpose."

Commissioners of excise, upon request, to provide seals, and appoint officers to mark the goods;

*Sett.* 18. "And for the greater ease and convenience of the person or persons, who shall make, weave, or fabricate any such cambricks or lawns, or goods of the kind usually known by or under either of those denominations; be it enacted by the authority aforesaid, That it shall and may be lawful to and for the commissioners of excise for the time being, or the major part of them, from time to time, upon request made to them by any such person or persons, and at the expence of such person or persons, to provide such seal or marks as to them the said commissioners, or the major part of them, shall seem proper; and to direct or appoint one or more supervisor, or other officer or officers of the excise, of the district or division in which any such manufacture shall be carried on, to seal or make each and every piece of such cambrick or lawn, or goods of the kind usually known under either of those denominations, which shall be made, wove, or fabricated, by such person or persons applying as aforesaid, with such seal or mark, or seals or marks, in manner herein after mentioned and directed; and the officer or officers of excise, who shall be so appointed to mark or seal such goods, shall by the fabricator, maker, weaver or proprietor of such goods, be paid for every piece of such goods, which he or they shall mark or seal in pursuance of this act, before the same shall be cut or taken out of the loom, such sum as the commissioners of excise for the time being, or the major part of them, shall direct and appoint."

who are to be paid for marking &c. such goods before taken out of the loom.

Manufacturer to give notice to officer of the finishing of every piece, who is to mark the ends before taken out of the loom.

*Sett.* 19. "And be it further enacted by the authority aforesaid, That all and every person and persons who shall weave, fabricate, or make any such cambricks or lawns, or goods of the kind usually known by or under either of those denominations, shall, before the same shall be taken or cut out of the loom, give notice in writing, of the finishing of every or any piece or pieces of such goods, to such supervisor or other officer as aforesaid,

faid,

said, who, before any such piece of goods shall be cut out of the loom, shall mark or seal both the ends of every such piece of goods, with such stamp, mark or seal, which shall be provided and appointed for that purpose, in manner aforesaid; upon pain that every person who shall weave, make or fabricate such cambricks or lawns, or goods of the kind usually known by or under those denominations, and shall cut or take any piece of such goods out of the loom, after the same shall have been finished, or permit the same to be done, without having first given such notice in writing, and having the ends thereof marked or sealed as aforesaid, shall, for every such offence, forfeit five pounds; and the goods so cut out of the loom without such notice being given, and such marks or seals being set thereon, in manner herein before directed, shall be forfeited, and shall be seized by any officer or officers of the customs or excise."

Penalty on taking any piece out of the loom without giving such notice, and having the ends marked, 5l. and loss of the goods.

Sec. 20. "And be it further enacted by the authority aforesaid, That every supervisor or other officer of excise, of the district in which any such manufacture of cambricks or lawns, or goods of the kind usually known by or under either of those denominations, shall be carried on, who shall be so as aforesaid appointed by the commissioners of excise, or the major part of them, to mark or seal such goods, upon reasonable notice given to him or them by any person or persons who shall make, weave or fabricate any such goods, that any piece of such goods is finished, shall forthwith, or as soon as conveniently may be consistent with other the duty and business of his office, in manner herein before directed, mark or seal both ends of every such piece of goods with such mark or seal which shall be so as aforesaid appointed and provided for that purpose, and also fix or set a distinct and separate number to every piece of such goods before the same shall be taken out of the loom; and also make a just and true entry in writing, in proper books to be provided for that purpose at the expence of the manufacturer of such goods, of the number set to each piece of goods, and of the number of yards which each piece of such goods shall contain in length, and also of the number of threads contained in the warp of each piece of such goods; upon pain that every supervisor, or other officer or officers so appointed as aforesaid, who shall, upon reasonable notice given as aforesaid of the finishing of any piece of such goods, neglect or refuse to mark or seal the beginning and end of every piece of such goods in manner herein before directed, or to fix or set a distinct and separate number on each piece of such goods, or to make a true and just entry in manner aforesaid, of the number set or affixed to each piece of such goods, and of the number of yards which each piece thereof shall contain in length, and also the number of threads contained in the warp of each piece of such goods, shall, for every such refusal or neglect, forfeit the sum of ten pounds."

Officer, on notice of the finishing any pieces of such goods, forthwith to mark the beginning and ends, and set a number on each piece before taken out of the loom;

and to make a true entry of the numbers, lengths, and the number of threads in the warp of each piece on forfeiture of 10l.

Sec. 21. "And be it further enacted by the authority aforesaid, That if any such supervisor, or other officer or officers of the excise, who shall be so appointed to mark or seal such cambricks or lawns, or who shall have the custody of any mark or seal which shall be so provided and appointed to mark or seal such goods, shall therewith mark or seal any cambricks or lawns, or goods of the kind usually known by or under

Officers marking cambricks or lawns not made in England,

or marking  
such goods af-  
ter taken out  
of the loom,  
to forfeit 50 l.  
and be incapa-  
citated.

either of those denominations, which shall not have been made, wove and fabricated in *England*, or the principality of *Wales*, or shall knowingly permit it to be done, or shall mark or seal any piece of such goods after the same shall have been taken out of the loom, every such supervisor, or other officer or officers so marking or sealing any such cambricks or lawns, or goods of the kind usually known under either of those denominations, or wilfully or knowingly permitting the same to be done, contrary to the true intent and meaning of this act, shall forfeit the sum of fifty pounds for every piece of such goods which he or they shall so mark or seal, or permit or suffer to be marked or sealed, contrary to the true intent and meaning of this act, to be sued for and recovered in any of his majesty's courts of record at *Westminster*, by bill, plaint or information, by any person or persons who will inform or sue for the same; and such supervisor, or other officer or officers, upon being convicted of any or either of the offences aforesaid, shall lose his or their office or offices and employments under the excise, and is and are hereby declared and rendered ever after incapable of having, using or enjoying any office or place of trust under his majesty, his heirs and successors."

Penalty on  
bribing of-  
ficers.

*Sec. 22.* "And be it further enacted by the authority aforesaid, That if any person or persons shall, by bribery, fraud, covin deceit or imposition, or in any manner whatsoever, prevail on or procure any officer or officers of the excise, or other person who shall be appointed to mark or seal any cambricks or lawns, or who shall have the custody of any seal, stamp or mark, provided and appointed for that purpose, in pursuance of this act, to set or affix such mark, seal or stamp, to any piece or pieces of cambrick or lawn, or of goods of the kind usually known under either of those denominations, which shall not have been actually and *bona fide* made, wove or fabricated, in that part of *Great Britain* called *England*, or principality of *Wales*, or after the same shall have been cut or taken out of the loom, contrary to the true intent and meaning of this act; all and every such offender and offenders, and his and their aiders, abettors, and assistants (being thereof lawfully convicted) shall, for every such offence, forfeit and lose the sum of one hundred pounds, and be adjudged to stand in the pillory two hours; and if any person or persons shall give pay or secure, or offer to give, pay or secure, to any such officer or officers, or other person as aforesaid, any bribe, recompence or reward of any kind whatsoever, in order to corrupt, persuade or prevail on such officer or officers, or other person, to set or affix such mark, stamp or seal, as aforesaid, to any piece or pieces of cambrick, lawn or other goods directed by this act to be stamped or sealed, which shall not have been actually and *bona fide* made, wove and fabricated, in that part of *Great Britain* called *England*, or the principality, of *Wales*, or after the same shall have been taken out of the loom, such person or persons so offending shall, for every such offence, forfeit and lose the sum of fifty pounds."

Officers to  
transmit to  
the commis-  
sioners of ex-

*Sec. 23.* "And be it further enacted by the authority aforesaid, That all and every supervisor or other officer or officers of excise, who shall in manner aforesaid be appointed to mark or seal any cambricks, lawns, or  
such

such kind of goods, in pursuance of this act, shall yearly and every year (while such officer or officers shall have the custody of any such seal provided or appointed for that purpose in manner aforesaid) in the month of *June*, transmit and send to the commissioners of excise in *London*, a full, true and just account in writting of all and every piece and pieces of such goods, which he or they shall seal or stamp in pursuance of this act; and also a true copy of all and every entry or entries of any kind whatsoever, which he or they shall make in any such book or books provided for that purpose in any wise relating thereto, for or during the twelve calendar months next preceding the said month of *June*; distinguishing in such accounts the several manufacturers or proprietors, if there shall be more than one such in such officer's district, who shall have made or be owners of such goods; upon pain of being dismissed from his or their employ as an officer or officers of excise; and all and every such officer or officers having the custody of any such stamp, mark or seal as aforesaid, his or their executors or administrators, or such other person or persons in whose custody or power the same shall fall or come by the death of such officer or officers, or in any other manner, shall, upon demand or order from or by the commissioners of excise, or the major part of them, deliver up to such commissioners, or such person or persons as they shall appoint to receive the same, all and every such seal or seals which shall have been delivered to such officer or officers, or by any other means come or fallen into the hands, custody or power of such officer or officers or other persons whatsoever; upon pain that any such officer or officers, or other person or persons, refusing or neglecting so to do upon any such order or demand as aforesaid, shall forfeit and lose the sum of two hundred pounds, to be recovered and applied in like manner with the other penalties inflicted by this act, by any person or persons who will inform or sue for the same."

cise an annual  
account of all  
goods they  
shall stamp,  
and a copy of  
all entries re-  
lating thereto.

Officers, &c.  
to deliver up  
seals, &c. to  
commissioners  
of excise, on  
demand, on a  
penalty of  
200*l*.

*Stat. 24.* "And be it further enacted by the authority aforesaid, That if any cambrick or lawn, or goods of the kind usually known by or under either of those denominations, made, wove or fabricated in *England*, or the principality of *Wales*, after the said tenth day of *May* next ensuing, shall be found in any house, shop, warehouse, room, cellar, vault, or other place, in *England*, or principality of *Wales*, without being marked or sealed at each end of every whole and entire piece, and at one end of every remnant of such cambricks or lawns, or goods of the kind usually known by or under those denominations, all such goods shall be forfeited, and shall and may be seized by any supervisor or other officer or officers of the customs: or excise, and such supervisor or other officer or officers is and are hereby indemnified for seizing such goods; and all such goods so seized shall and may be deposited in the customhouse warehouse, or in the excise office next to the place where the same shall be seized, and after condemnation thereof by due course of law, shall be publickly sold to the best bidder; and that one moiety of the produce arising by the sale thereof, after deducting the charges and expences attending the condemnation and sale of such goods, shall be to the use of his majesty, his heirs and successors, and

Cambricks  
and lawns  
made in Eng-  
land after 10  
May 1764,  
found un-  
stamped, may  
be seized.

Persons exposing to sale, or having in their custody for sale, such goods unstamped, to forfeit 200l.

the other moiety thereof to such supervisor or other officer or officers as aforesaid, who shall seize or sue for the same; and all and every person or persons who shall sell or expose to sale, or have in his or their custody for that purpose, any cambricks or lawns, or goods of the kind usually known by or under either of those denominations, made and fabricated in *England*, or the principality of *Wales*, and not marked or sealed at both ends of every entire piece, and at one end of every remnant of such goods, in manner by this act directed, shall for every such offence, forfeit the sum of two hundred pounds, to be recovered and divided in manner herein after directed.

Goods condemned by virtue of this act, not to be worn here, but sold for exportation, and the buyers to give security.

*Secl.* 25. " And be it further enacted by the authority aforesaid, That no cambricks or lawns, or goods of the kind usually known by or under either of those denominations, which after the said tenth day of *May* one thousand seven hundred and sixty-four, shall be seized and condemned by virtue of this act, shall be consumed or worn in this kingdom, but shall be exported, and not sold otherwise than on condition to be exported, and shall not be delivered out of the warehouse where the same shall have been secured, until sufficient security by bond, to be approved of by the collector of the port from whence such goods shall be exported, in the penalty of double the value of the goods to be given by the exporter thereof, that the same, and every part thereof, shall be exported, and not relanded in any part of *Great Britain*.

Persons counterfeiting the seal, &c. or selling goods with a counterfeit seal, &c. guilty of felony.

*Secl.* 26. " And be it further enacted by the authority aforesaid, That if any person or persons shall, at any time or times hereafter, forge or or counterfeit any stamp, mark or seal, to resemble any stamp, mark or seal, which shall be provided or used in pursuance of this act, or shall forge, resemble or counterfeit the impression of any such mark, stamp or seal, upon any goods required by this act to be stamped, marked or sealed, or shall import or bring into *England* any foreign cambricks or lawns, or goods of the kind usually known by or under either of those denominations, having any such counterfeit mark, seal, stamp or impression thereon, or sell or expose to sale any cambricks or lawns, or goods of the kind usually known by or under either of those denominations, with such counterfeit mark, seal, stamp or impression thereon, knowing such stamp, mark or seal to be counterfeited; every such person so offending, being thereof lawfully convicted, shall be judged guilty of felony, and shall suffer as in cases of felony, without benefit of clergy.

Cambricks or lawns made or begun in *England* before commencement of this act, to be sealed.

*Secl.* 27. " Provided always, and be it enacted by the authority aforesaid, That it shall and may be lawful to and for the commissioners of excise in *England* for the time being, or the major part of them, at any time within two months next after the commencement of this act, to order and direct all such cambricks and lawns, or goods of the kind usually known by or under either of those denominations, which shall have been made, or begun to be made, wove and fabricated in *England* or *Wales*, at any time before the commencement of this act, to be sealed or marked at both ends of every piece thereof with such mark or seal which shall be provided and appointed as aforesaid, notwithstanding the same shall have been

been taken out of the loom (proof being first made upon oath to the satisfaction of the said commissioners, that all such goods were really and *bona fide* made, or begun to be made, wove and fabricated, in *England*, or *Wales*, before the commencement of this act), which goods so marked or sealed, and numbered, in pursuance of such directions, shall and may be sold, disposed of, and used, in like manner as if the same had been made or wrought after the commencement of this act, and all the directions thereof fully complied with; any thing in this act contained to the contrary thereof, in any wise notwithstanding; and the supervisor, or other officer or officers of the excise, who shall be directed to mark or seal and number such goods, shall make the like entry of the number of yards in length, and number of threads contained in the warp of each piece of such goods, and the number set thereon, in like manner and under the like penalties as herein before directed, with respect to cambricks or lawns made after the commencement of this act.

*Seet.* 28. " And be it further enacted by the authority aforesaid, That all such goods which shall be seized or condemned in pursuance of this act, and all pecuniary penalties and forfeitures by this act inflicted, shall and may be sued for, prosecuted and recovered in any of his majesty's courts of record at *Westminster*, by action of debt, bill, plaint or information, in the name of his majesty's attorney general, or in the name or names of any such supervisor or other officer or officers of the customs or excise as aforesaid, except in such cases where it is otherwise provided by this act; and that one moiety of the clear produce arising from the sale of all such goods, and of all the pecuniary penalties and forfeitures inflicted by this act, after all charges deducted, shall be to his majesty, his heirs and successors, and the other moiety thereof to the officer or officers, or such other person who, pursuant to the directions of this act, shall seize, inform or prosecute for the same. Seizures and penalties, how to be recovered and applied.

*Seet.* 29. " And be it further enacted by the authority aforesaid, That upon every action, bill, plaint or information, entered or filed as aforesaid, for any pecuniary penalty imposed by this act, a *Capias* in the first process shall and may issue, specifying the sum of the penalty sued for; and the defendant or defendants shall be obliged to give sufficient bail or security by natural-born subjects, persons naturalized, or denizens, to the person or persons to whom such *Capias* shall be directed, to appear in the court out of which such *Capias* shall issue, at the day of the return of such writ, to answer such suit or prosecution; and shall likewise, at the time of such appearance, give sufficient bail or security, by such persons as aforesaid, in the said court, to answer and pay all the forfeitures and penalties incurred for such offence or offences, in case he, she or they shall be convicted thereof, or to yield his, her or their body or bodies to prison. A *Capias* to issue for the penalties in the first process. Defendants to give bail.

*Seet.* 30. And be further enacted by the authority aforesaid, That if any action or suit shall be commenced against any person or persons, for recovery of any of the pecuniary penalties inflicted by this act, such action or suit shall be brought or commenced within twelve calendar months next after the cause of action shall arise, and not afterwards, and shall be Limitation of actions.



General issue.

laid and brought in the county or place where the cause of action shall arise, and not elsewhere; and the defendant or defendants in such action or suit shall and may plead the general issue, and give this act, and the special matter in evidence, at any trial to be had thereon, and that the same was done by the authority of this act: and if it shall appear to have been so done, then the jury shall find for the defendant or defendants; and if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her or their action or suit, after the defendant or defendants shall have appeared; or if, upon verdict or demurrer, judgment shall be given against the plaintiff or plaintiffs; the defendant or defendants shall recover treble costs, and have such remedy for the same as any defendant or defendants hath or have in other cases by law.

Treble costs.

*Onus probandi*  
to lie on the  
claimer.

*Seet. 31.* "And be it further enacted by the authority aforesaid, That if any cambricks or lawns, or goods of the kind usually known by or under either of those denominations, shall be seized by virtue or in pursuance of this or any other act now in force; or if any action shall be brought by the owner or claimer of such goods, against any officer of the customs or excise, or any other person, for any thing done in pursuance of this or any other act now in force, and any doubt or question shall arise where such goods were manufactured, the proof thereof shall lie upon the owner or claimer of such goods, and not on the person who seized the same, or against whom such action shall be brought; any law, usage or custom to the contrary notwithstanding.

Act not to ex-  
tend to Scot-  
land or Ire-  
land.

*Seet. 32.* "Provided always, and be it enacted, That nothing in this act contained shall be extended, or construed, deemed or taken to prevent the sale of, or lay any kind of restriction on, any linen goods whatsoever, really and *bona fide* made, wove or fabricated in *Scotland* or *Ireland*; but that all such goods shall and may be lawfully sold and used in *England*, in the same manner as if this act had not been made.

Publick act.

*Seet. 33.* "And be it further enacted by the authority aforesaid, That this act shall be adjudged, deemed and taken to be a public act, and be judicially taken notice of as such, by all judges, justices, and other persons whatsoever, without specially pleading the same."

**Stat. 7 Geo. 3. c. 43.** [*A. D. 1767. Intituled*] "An act to amend and enforce the acts of the eighteenth, twenty-first, and thirty-second years of the reign of his late majesty king *George* the second, for the more effectually preventing the fraudulent Importation and wearing of cambricks and *French* lawns.

Preamble, re-  
citing acts 18  
Geo. 2.

"Whereas an act passed in the eighteenth year of the reign of his late majesty king *George* the second, intituled, "An act for prohibiting the wearing and importation of cambricks and *French* lawns;" and also one other act passed in the twenty-first year of the reign of his said majesty, intituled, "An act for explaining, amending, and enforcing an act made in the eighteenth year of the reign of his present majesty," intituled, "An act for prohibiting the wearing and importation of cambricks and *French* lawns;"

21 Geo. 2.

lawns;" and another act made in the thirty-second year of the reign of his said late majesty king *George* the second, intituled, "An act for the more effectual preventing the fraudulent importation of cambricks and *French* lawns," have been found ineffectual: May it therefore please your majesty, that it may be enacted; and Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of *July* one thousand seven hundred and sixty-seven, no cambrick or *French* lawn shall be imported into any part of *Great Britain*, except into the port of *London* only.

*Señ. 2.* "And be it further enacted by the authority aforesaid, That no such cambrick or *French* lawn shall be allowed to be imported into the port of *London* from any parts beyond the seas, except in *British* ships navigated according to law; and except notice be first given to the commissioners of his majesty's customs of the species, and quantity, and marks of the packages, of such cambricks and *French* lawns, and the name of the ship in which the same are intended to be imported; and a licence given under the hands of the commissioners of his majesty's customs in *England* for the time being, or any three of them, for the landing thereof, within thirty days from the date of such licence; which licence they are hereby authorized and required to grant without any fee or reward, or any other charge to the person demanding the same: And if any cambricks or *French* lawns shall be imported into *Great Britain* contrary to the true intention of this act, or without such licence as is herein before directed, such goods, with the package containing the same, together with the ship or vessel in which the same shall be imported, shall be forfeited and lost, and shall and may be seized and prosecuted as herein after mentioned; any law, custom or usage to the contrary notwithstanding.

*Señ. 3.* "Provided always, That no such licence shall be granted for the importation or landing of any cambricks or *French* lawns in any other package, or in any less quantity, than is directed and allowed by the last recited act of the thirty-second year of the reign of his late majesty king *George* the second.

*Señ. 4.* "And it is hereby further enacted, That such licence shall be produced and delivered up by the master or person taking charge of the ship wherein such cambricks or *French* lawns shall be imported, together with the marks, numbers, and contents of each package, endorsed on the back thereof, to the collector and comptroller of the customs, at the time of entering and reporting such ship, on the forfeiture of one hundred pounds; and such cambricks and *French* lawns shall, upon landing, be warehoused under the like rules, regulations, and restrictions; and shall not be afterwards delivered out of such warehouse, but on condition to be exported to some of the *British* colonies or plantations in *America*, under the like securities and restrictions as are expressed and directed in the said last recited act of the thirty-second year of the reign of king *George* the second, and upon payment of the same duties as they are now liable to by law.

*Señ.*

and 32 Geo. 2.

No cambrick or *French* lawn to be imported into any part of *Great Britain*, except into the port of *London*. After

1 July 1767;

and in *British* ships navigated according to law;

Notice thereof also being first given to the commissioners of the customs, and a licence obtained for the landing; otherwise they are liable to forfeiture, together with the vessel.

Licence to be restrained to the package, and quantity, prescribed by act 32 G. 2.

and to be delivered up by the master, &c.

at the time of entering and reporting the vessels, and the goods to be warehoused; and delivered out for exportation only.

No cambrick or lawn to be imported from Ireland, till the importation of cambricks and French lawns into that kingdom be prohibited by law.

Vessels from foreign parts found hovering on the coast, &c. having on board any cambrick or French lawns, not licensed,

are liable to forfeiture, together with the goods.

Foreign cambrick, or French lawn, found in possession of any hawker or pedler, are liable to forfeiture, with all the other goods in the pack.

Goods seized to be deposited in the king's warehouses, and to be free to inspection ;

*Señ. 5.* " And be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of *June* one thousand seven hundred and sixty-eight, no cambrick or lawn whatsoever shall be imported from the kingdom of *Ireland*, into any part of *Great Britain*, until the importation of cambricks and *French* lawns into the kingdom of *Ireland* shall be prohibited by law ; upon pain of forfeiting the said goods, and the further penal sum of five pounds for every piece of cambrick or lawn so imported."

*Señ. 6.* " And be it further enacted by the authority aforesaid, That from and after the said first day of *July* one thousand seven hundred and sixty-seven, where any ship or vessel whatsoever coming or arriving from foreign parts, and having on board any cambrick or *French* lawns, without such licence as is herein before directed, shall be found at anchor, or hovering within the limits of any of the ports of *Great Britain*, or within two leagues of the shore, or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting, (unless in case of unavoidable necessity and distress of weather, of which necessity and distress the master, purser, or other person, having or taking the charge or command of such ship or vessel, shall give notice to, and make proof of before, the collector or other chief officer of the customs of such port as aforesaid, immediately after the arrival of such ship or vessel into the said port), all such cambrick or *French* lawn, together with the chests, boxes and other package whatsoever, containing the the same goods, and the ship or vessel on board which the same shall be found, or the value thereof, shall be forfeited and lost (whether bulk shall have been then broken or not), and the same goods and package shall and may be seized and prosecuted, or the value thereof be recovered, by any officer or officers of the customs or excise, in manner herein after mentioned; any law, statute or custom to the contrary notwithstanding."

*Señ. 7.* " And be it further enacted by the authority aforesaid, That from and after the first day of *July* one thousand seven hundred and sixty-seven, if any foreign cambrick or *French* lawn shall be found in the possession of any hawker, pedler, or petty chapman, such hawker, pedler, or petty chapman, shall not only forfeit such foreign cambricks and *French* lawns, but also all the other goods contained in the pack where such goods shall be found ; and shall also be adjudged to have forfeited his licence."

*Señ. 8.* " And be it further enacted by the authority aforesaid, That forthwith, after the seizure of any such cambricks or *French* lawns, or as soon after as conveniently may be, the same shall be sent to, and deposited in, one of the king's warehouses belonging to the custom-house in *London* ; and all and every such cambricks and *French* lawns may, from time to time, be viewed and inspected by any person or persons on behalf of the prosecutor or prosecutors, or of the person or persons interested in, or claiming the said cambricks or *French* lawns ; and the commissioners of his majesty's customs

customs are hereby required to make and give sufficient orders from time to time for that purpose; and after condemnation thereof, in due course of law, all and every such cambricks or *French* lawns shall be stamped or marked in such manner as the commissioners of the customs in *England*, or any three or more of them, shall direct; and shall be publickly sold, to the best advantage, for exportation to the *British* colonies or plantations in *America* only; and one moiety of the produce or money arising by the sale of such cambricks and *French* lawns shall be to the use of his majesty, his heirs and successors, and the other moiety thereof to the use of the officer or officers who shall seize and secure the same: And no such cambricks or *French* lawns shall be sold otherwise than on condition to be exported as aforesaid; and shall not be delivered out of the warehouse or place wherein the same shall have been secured, until sufficient security, by bond, shall be first given to the king's majesty, his heirs and successors, which the commissioners of his majesty's customs are hereby impowered and required to take, that the same, and every part thereof, shall be exported as aforesaid, and not landed again in any place except the said colonies or plantations; which bonds shall and may be discharged without fee or reward, upon certificate returned, signed by the collector or other proper officer of such colony or plantation, that the goods were there landed; or upon proof by two credible persons that such goods were taken by the enemies, or perished in the seas, the examination and proof thereof being hereby left to the judgment of the said commissioners; which commissioners are hereby impowered and required, from time to time, to call upon the person or persons who have entered into such security to produce such certificate or proof as aforesaid; and in default of producing such certificate, or proof to the satisfaction of the said commissioners, such bonds shall and may be put in suit, and prosecuted by order of the said commissioners, against the person or persons who shall so make default, in such manner as offences of the like kind are sued or prosecuted by any law or statute of this realm."

*Sett.* 9. "And be it further enacted by the authority aforesaid, That if any officer or officers shall neglect or refuse, for the space of one month after the condemnation of such goods, to prosecute to effect any person or persons for any penalty or forfeiture by this act inflicted upon offenders against the same; that then, and in every such case, it shall be lawful for any person or persons whomsoever to sue for, prosecute and recover the respective penalties or forfeitures by this act inflicted, by action of debt, bill, plaint or information, in any of his majesty's courts of record at *Westminster*, or court of exchequer in *Scotland*, together with costs of suit; wherein no essoin, protection, privilege or wager of law, or more than one imparlance, shall be allowed; and that one moiety of such penalties and forfeitures shall be to the use of the king's majesty, his heirs and successors, and the other moiety thereof to such person or persons as shall sue for and recover the same."

*Sett.* 10. "And be it further enacted by the authority aforesaid, That all cambricks, or goods of the kind usually known under that denomination, Vol. I. N<sup>o</sup> XXIII.

and, after  
condemna-  
tion, to be  
stamped,

and sold for  
exportation.

The money  
arising by the  
sale to be di-  
vided between  
the crown  
and the offi-  
cer.

Bond to be  
given for the  
due exporta-  
tion thereof;

to be disch-  
arged upon cer-  
tificate accord-  
ing thereto,  
on proof of  
the goods  
having been  
taken by the  
enemy, or  
lost at sea;

otherwise to  
be put in suit.

Where, after  
condemna-  
tion, officer  
shall neglect  
to sue for the  
penalty,

any person  
may sue for,  
and recover  
the same;

to be divided  
between the  
crown and  
prosecutor.

Cambricks  
fabricated in

Great Britain to be stamped at each end.

tion, which from and after the twenty-ninth day of *September* one thousand seven hundred and sixty-seven, shall be woven or fabricated in *Great Britain*, shall be marked or stamped at each end of every piece with such mark or stamp, and by such officer or officers, as the commissioners of the excise in that part of *Great Britain* called *England*, and that part of *Great Britain* called *Scotland*, shall respectively direct and appoint for that purpose."

Commissioners of excise, upon request made to them by the maker or proprietor of cambricks, may order stamps to be made;

or direct and appoint officers to stamp the pieces,

for which they are to be paid as the commissioners shall direct.

*Señ. 11.* " And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the said respective commissioners of excise for the time being, or the major part of them, from time to time, upon request made to them by any such person or persons, and at the expence of such person or persons, to provide such marks or stamps, as to the said respective commissioners, or the major part of them, shall seem proper; or to direct and appoint one or more supervisor or other officer or officers of the excise, of the district or division in which any such manufacture shall be carried on, to mark or stamp each and every piece of such cambrick, or goods of the kind usually known under that denomination, which shall be made, wove or fabricated by such person or persons applying as aforesaid, with such mark or stamp, or marks or stamps, in manner herein after mentioned and directed; and the officer or officers of excise, who shall be so appointed to mark or stamp such goods, shall, by the fabricator, maker, weaver or proprietor of such goods, be paid, for every piece of such goods which he or they shall mark or stamps in pursuance of this act, such sum as the commissioners of excise, for the time being, or the major part of them, shall direct and appoint.

Notice for the purpose to be given to the officers, and the goods to be stamped before they are cut out of the loom,

on penalty of 5 l.

and forfeiture of the goods.

Officer to attend, on reasonable notice given him,

*Señ. 12.* " And be it further enacted by the authority aforesaid, That all and every person and persons, who shall weave, fabricate, or make any such cambrick, or goods of the kind usually known by that denomination, shall, before the same shall be taken or cut out of the loom, give notice in writing of finishing of every or any piece or pieces of such goods, to such supervisor or other officer as aforesaid; who, before any such piece of goods shall be cut out of the loom, shall mark or stamp both ends of such piece of goods with such mark or stamp as shall be provided and appointed for that purpose in manner aforesaid; upon pain that every person, who shall weave, make or fabricate such cambrick, or goods of the kind usually known by that denomination, and shall cut or take any piece of such goods out of the loom after the same shall have been finished, or permit the same to be done without having first given such notice in writing, and having such piece marked or stamped as aforesaid, shall, for every such offence, forfeit the sum of five pounds; and the goods so cut out of the loom, without such notice being given, and such marks or stamps being set thereon, in manner herein before directed, shall be forfeited, and shall and may be seized by any officer or officers of the customs or excise.

*Señ. 13.* " And be it further enacted by the authority aforesaid, That every supervisor, or other officer of the excise of the district in which any such manufacture of cambrick, or goods of the kind usually known by or under that denomination, shall be carried on, who shall be so as aforesaid

appointed by the commissioners of the excise, or the major part of them, to mark or stamp such goods, upon reasonable notice given to him or them by any person or persons who shall make, weave or fabricate any such goods, that any piece of such goods is finished, shall forthwith, or as soon as conveniently may be, consistent with other the duty and business of his office, in manner herein before directed, mark or stamp both ends of such piece of goods with such mark or stamp as shall be so appointed and provided for that purpose; and also fix or set a distinct and separate number to every piece of such goods, before the same shall be taken out of the loom; and also make a just and true entry in writing, in proper books to be provided for that purpose at the expence of the manufacturer of such goods, of the number set to each piece of such goods, and the number of yards which each piece of such goods shall contain in length; and also the number of threads contained in the warp of each piece of such goods; upon pain that every supervisor, or other officer so appointed as aforesaid, who shall, upon reasonable notice given as aforesaid of the finishing of any piece of such goods, neglect or refuse to mark or stamp any piece of such goods in manner herein before directed, or to fix or set a distinct and separate number on each piece of such goods, or to make a true and just entry in manner aforesaid of the number set or affixed to each piece of such goods, and of the number of yards which each piece thereof shall contain in length, and also the number of threads contained in the warp of each piece of such goods; shall, for every such refusal or neglect, forfeit and pay the sum of five pounds sterling money.

*Sec. 14.* " And be it further enacted by the authority aforesaid, That if any such supervisor, or other officer or officers of the excise, who shall be so appointed to seal or stamp such cambricks, or who shall have the custody of any mark or stamp which shall be so provided and appointed to mark or stamp such goods, shall therewith mark or stamp any cambricks or lawns, or goods of the kind usually known by or under those denominations, which shall not have been made, wove or fabricated in *Great Britain*, or shall knowingly permit it to be done; or shall mark or stamp any piece of such goods, after the same shall be taken out of the loom: every such supervisor, or other officer or officers so marking or stamping any such cambricks or lawns, or goods of the kind usually known under either of those denominations, or wilfully or knowingly permitting the same to be done, contrary to the true intent and meaning of this act, shall forfeit the sum of fifty pounds for every piece of such goods which he or they shall so mark or stamp, or permit or suffer to be marked or stamped, contrary to the true intent and meaning of this act; and such supervisor, or other officer or officers, upon being convicted of either or any of the offences aforesaid, shall lose his or their office or offices and employments, and is and are hereby declared and rendered ever after incapable of having, using or enjoying any office or place of trust under his majesty, his heirs and successors."

*Sec. 15.* " And be it further enacted by the authority aforesaid, That if any person or persons shall, by bribery, fraud, covin, deceit or imposition, and the persons concerned in prece-

ring such fraud  
to be com-  
mitted;

their aiders  
and abettors  
forfeit 100 l.  
and to stand  
in the pillory;

and persons  
attempting by  
bribery, or  
otherwise, to  
corrupt offi-  
cers, to affix  
the stamps  
falsely to any  
piece,

forfeit 50 l.

Officer to  
transmit to  
the commis-  
sioners of ex-  
cise an ac-  
count yearly  
of the No. of  
pieces stamp-  
ed by him;

and a copy of  
his entries;

distinguishing  
the manufac-  
turers;

on penalty of  
dismissal.

The stamps  
to be deliver-  
ed upon de-  
mand or or-  
der of the  
commission-  
ers,

sition, or in any other manner whatsoever, prevail on, or procure any officer or officers of the excise, or other person who shall be appointed to mark or stamp any cambricks, or who shall have the custody of any mark or stamp, to mark or stamp any piece or pieces of cambrick or lawn, or of goods of the kind usually known under either of those denominations, which shall not have been actually and *bona fide* made, wove or fabricated in *Great Britain*; or after the same shall have been cut or taken out of the loom, contrary to the true intent and meaning of this act; all and every such offender and offenders, and his and their aiders and abettors, and assistants, being thereof lawfully convicted, shall, for every such offence, forfeit and lose the sum of one hundred pounds, and be adjudged to stand in the pillory two hours: And if any person or persons shall give, pay or secure, or offer to give, pay or secure, to any such officer or officers, or other person as aforesaid, any bribe, recompence or reward of any kind whatsoever, in order to corrupt, persuade or prevail on such officer or officers, or other person, to set or affix such mark or stamp as aforesaid to any piece or pieces of cambrick, directed by this act to be marked or stamped, which shall not have been actually and *bona fide* made, wove and fabricated in *Great Britain*, or after the same shall have been taken out of the loom; such person or persons so offending shall, for every such offence, forfeit and lose the sum of fifty pounds."

*Secl. 16.* "And be it further enacted by the authority aforesaid, That all and every supervisor, or other officer or officers of excise, who shall in manner aforesaid be appointed to mark or stamp any cambricks in pursuance of this act, shall yearly and every year (while such officers shall have the custody of any such stamp provided and appointed for that purpose in manner aforesaid) in the month of *June*, transmit and send to the commissioners of excise in *London* or *Edinburgh* respectively, a full, true and just account in writing, of all and every piece and pieces of such goods which he or they shall mark or stamp in pursuance of this act; and also a true copy of all and every entry or entries, of any kind whatsoever, which he or they shall make in any such book or books provided for that purpose, in any wise relating thereto, for and during the twelve calendar months next preceding the said month of *June*; distinguishing in such accounts the several manufacturers or proprietors, if there shall be more than one such in such officer's district, who shall have made or be owners of such goods; upon pain of being dismissed from his or their employ as an officer or officers of the excise: And all and every such officer or officers having the custody of any such mark or stamp as aforesaid, his or their executors or administrators, or such other person or persons in whose custody or power the same shall fall or come by the death of such officer or officers, or in any other manner, shall, upon demand or order from or by the commissioners of excise, or the major part of them, deliver up to such commissioners, or such person or persons as they shall appoint to receive the same, all and every such mark or stamp which shall have been delivered to such officer or officers, or by any other means come or fallen into the hands, custody or power of such officer or officers, or other persons whatsoever; upon pain that

that any such officer or officers, or other person refusing or neglecting so to do, upon any such order or demand as aforesaid, shall forfeit and lose the sum of two hundred pounds; to be recovered and applied in manner herein after mentioned.” on forfeiture of 200 l.

*Sett.* 17. “ And be it further enacted by the authority aforesaid, That if any cambrick, or goods of the kind usually known by or under that denomination, made, wove or fabricated in *Great Britain*, after the said twenty-ninth day of *September* one thousand seven hundred and sixty-seven, shall be found in any place whatsoever in *Great Britain*, without being marked or stamped at each end of every whole and intire piece, and at one end of every remnant of such cambrick, or goods of the kind usually known by or under that denomination, all such goods shall be forfeited, and shall and may be seized by any officer of the excise or customs; and such officer or officers is and are hereby indemnified for seizing such goods; and such goods so seized shall be deposited in the king’s warehouse at the custom-house at *London*, or in the excise office next to the place where the same shall be seized; and after condemnation thereof, by due course of law, shall be publickly sold to the best bidder; and that one moiety of the produce arising from the sale thereof, after deducting the charges and expences attending the condemnation and sale of such goods, shall be to the use of his majesty, his heirs and successors, and the other moiety to such officer or officers who shall seize or sue for the same; and all and ever person or persons who shall sell or expose to sale, or have in his or their custody for that purpose, any cambrick, or goods of the kind usually called or known by or under that denomination, made and fabricated in *Great Britain*, and not marked or stamped at both ends of every intire piece, or at one end of every remnant of such goods, in manner by this act directed, shall, for every such offence, forfeit the sum of two hundred pounds; to be recovered and applied in manner herein after directed.” Goods found not legally stamped, are liable to forfeiture, and may be seized, and deposited in the king’s warehouse; and after condemnation, publickly sold. Money arising by the sale, after deducting all charges, to be divided between the crown and the officer. Persons exposing to sale unstamped goods, forfeit 200 l.

*Sett.* 18. “ And be it further enacted by the authority aforesaid, That if any person or persons shall, at any time or times hereafter, forge or counterfeit any mark or stamp, to resemble any mark or stamp which shall be provided or used in pursuance of this act; or shall forge, resemble or counterfeit the impression of any such mark or stamp upon any goods required by this act to be marked or stamped; or shall import or bring into *Great Britain* any foreign cambricks or lawns, or goods of the kind usually called or known by or under either of those denominations, having any such counterfeit mark, stamp or impression thereon; or sell or expose to sale any cambricks or lawns, or goods of the kind usually known by or under either of those denominations, with such counterfeit mark, stamp or impression thereon, knowing such mark or stamp to be counterfeited; every such person so offending, being thereof lawfully convicted, shall be judged guilty of felony, and shall suffer as in cases of felony without benefit of clergy.” Penalty of forging or counterfeiting any stamp; or importing, or exposing to sale, any goods with a counterfeit stamp thereon, is felony.

*Sett.* 19. “ Provided always, and be it enacted by the authority aforesaid, That it shall and may be lawful to and for the commissioners of excise in *England*, for the time being, or the major part of them, at any time The commissioners may order all such goods made,



or begun to be made in Great Britain or Ireland, before the commencement of the act, to be stamped, tho' taken out of the loom ;

and the same may be lawfully sold.

Officers to make due entry of all such pieces.

Persons possessed of cambricks or clear lawns, before 1 July 1767, not duly stamped, may deposit the same, before 1 August next, in warehouses for exportation ; upon payment of the half subsidy.

Goods, penalties, and forfeitures, in general, where not otherwise directed, where to be sued and recovered.

time within two months next after the commencement of this act, to order and direct all such cambrick, or goods of the kind usually known by or under that denomination, which shall have been made, or begun to be made, wove and fabricated in *Great Britain* or *Ireland*, at any time before the commencement of this act, to be marked or stamped at both ends of every piece thereof, with such mark or stamp which shall be provided and appointed as aforesaid, notwithstanding the same shall have been taken out of the loom (proof being made to the satisfaction of the said commissioners, that all such goods were really and *bona fide* made, or begun to be made, wove and fabricated in *Great Britain* or *Ireland*, before the commencement of this act) which goods so marked or stamped, and numbered, in pursuance of such directions, shall and may be sold, disposed of, and used, in like manner as if the same had been made or wrought after the commencement of this act, and all the directions thereof fully complied with ; any thing in this act contained to the contrary thereof in any wise notwithstanding : And the supervisor, or other officer or officers of the excise, who shall be directed to mark or stamp, and number such goods, shall make the like entry of the number of yards in length of each piece of such goods, and the number set thereon, in like manner, and under the like penalties, as herein before directed, with respect to cambricks made after the commencement of this act."

*Sec. 20.* " Provided always, and be it further enacted and declared, That if any person or persons shall, before the said first day of *July* one thousand seven hundred and sixty-seven, be possessed of any cambricks or clear lawns, or goods usually known by either of those denominations, which have not been stamped in the manner required by law ; such person and persons shall and may, on or before the first day of *August* one thousand seven hundred and sixty-seven, deposit such cambricks or clear lawns in any warehouse or warehouses, to be appointed for that purpose by the commissioners of the customs in *England*, for exportation to his majesty's colonies or plantations in *America* only, upon payment of the half subsidy which is to remain by law after such goods are exported, without any oath or other proof being required of the place where such goods were manufactured ; and no prosecution shall be commenced against any person or persons for having in their custody or possession any such unstamped goods, between the said first day *July* and the first day of *August* one thousand seven hundred and sixty-seven ; any thing in this or any other act of parliament to the contrary notwithstanding.

*Sec. 21.* " And be it further enacted by the authority aforesaid, That all such goods which shall be seized and condemned in pursuance of this act, and all penalties and forfeitures whatsoever by this act inflicted, (unless otherwise directed to be condemned and recovered by this act) shall and may be sued for, prosecuted and recovered in any of his majesty's courts of record at *Westminster*, or in the court of exchequer in *Scotland*, by action of debt, bill, plaint or information, in the name of his majesty's attorney general, or in the name or names of such supervisor, or other officer or officers of the

the excise or customs as aforesaid; and that one moiety of the clear produce arising from the sale of all such goods, and of all the penalties and forfeitures inflicted by this act, after all charges deducted, shall be to his majesty, his heirs and successors, and the other moiety thereof to the officer or officers who shall seize, inform or prosecute for the same.

*Seet. 22.* "And be it further enacted by the authority aforesaid, That upon every action, bill, plaint or information, entered or filed as aforesaid, for any penalty imposed by this act, a *capias* in the first process shall and may issue, specifying the sum of the penalty sued for; and the defendant or defendants shall be obliged to give sufficient bail or security by natural born subjects, persons naturalized, or denizens, to the person or persons to whom such *capias* shall be directed, to appear in the court out of which such *capias* shall issue, at the day of the return of such writ, to answer such suit or prosecution; and shall likewise, at the time of such appearance, give sufficient bail or security by such persons as aforesaid, in the said court, to answer and pay all the forfeitures and penalties incurred for such offence or offences, in case he, she or they shall be convicted thereof, or to yield his, her or their body or bodies to prison."

*Seet. 23.* "And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced against any person or persons, for any thing done in pursuance of this act, the defendant or defendants in such action or suit, shall and may plead the general issue, and give this act, and the special matter, in evidence, at any trial to be had thereon, and that the same was done by the authority of this act; and if it shall appear to have been so done, then the jury shall find for the defendant or defendants: And if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her or their action or suit, after the defendant or defendants shall have appeared; or if, upon verdict or demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall recover treble costs, and have such remedy for the same as any defendant or defendants hath or have in other cases by law."

*Seet. 24.* "And be it further enacted by the authority aforesaid, That if any cambricks or lawns, or goods of the kind usually known by or under either of those denominations, shall be seized by virtue or in pursuance of this or any other act now in force; or if any action shall be brought by the owner or claimer of such goods against any officer of the customs or excise, or any other person, for any thing done in pursuance of this or any other act now in force, and any doubt or question shall arise where such goods were manufactured; the proof thereof shall lie upon the owner or claimer of such goods, and not on the person who seized the same, or against whom such action shall be brought; any law, usage or custom to the contrary notwithstanding."

Produce from the sale, after all charges, to be divided between the crown and prosecutor.

*Capias* to issue upon entering an action, &c.

Defendant to give sufficient bail thereto.

General issue.

Treble costs.

In case of doubt or question, where the goods were manufactured,

the proof to lie on the owner or claimer.

## Carriers.

**A**LL persons carrying goods for hire, as masters and owners of ships, lighter-men, stage-coach men, &c. come under the denomination of common carriers, and are chargeable on the general custom of the realm for their faults and miscarriages. *Co. Lit.* 89. *1 Rol. Abr.* 2, 338.

Also if a person, who is no common carrier, takes upon himself to carry my goods, though I promise him no reward, yet if my goods are lost or damaged by his default, I shall have an action against him. *1 Bac. Abr.* 343.

But the master of a stage-coach, who only carries passengers for hire, shall not be liable for the goods of his passengers that are lost, and therefore where *A.* delivered a trunk to the driver or servant, who lost it out of his possession, it was held, that the master was not liable in an action upon the case on the custom of the realm; for though the servant received money for it, yet that was but a gratuity; and the master shall not be chargeable with the acts of his servant, otherwise than as he acts in execution of the authority given him. *1 Bac. Abr.* 343.

In what cases  
a carrier is  
chargeable for  
a failure in his  
duty.

If a man deliver goods to a common carrier to carry them to a certain place, if he loses them, an action upon the case lies against him; for by the common custom of the realm he ought to carry them safely. *1 Rol. Abr.* 2. *Hob.* 17. *Cro. Jac.* 262.

Also if a common carrier, who is offered his hire, and who has convenience, refuses to carry goods, he is liable to an action in the same manner as an inn-keeper who refuses to entertain a guest, or a smith who refuses to shoe a horse. *2 Show. Rep.* 327.

If a man delivers goods to a common hoyman, who is a common carrier of goods, to carry them to a certain place, and pays him according to the custom for the carriage of them, and after for default of good keeping they are lost; an action upon the case lies against him; for by the common custom of the realm he ought to have kept and carried them safely. *Cro. Jac.* 330. *Hob.* 17.

If a man delivers goods to such common hoyman, to carry to a place, and after delivers them (being of good value) to another to keep safely in the boat, and does not discharge the hoyman, and after they are lost through negligence, an action on the case lies against him. *1 Rol. Abr.* 2. *Hob.* 17. *Cro. Jac.* 330. *S. C.*

If *A.* delivers goods at *York* to *B.* (who is a water-carrier between *Hull* and *London*) to carry them from *Hull* to *London*; though the agreement is to carry the goods from *Hull* to *London*, and no mention is made of the carriage to *Hull*, yet if the goods are lost *B.* shall answer for them, for

I

upon

upon his general receipt of them at *York*, he is liable. 1 *Sid.* 36. see 1 *Roll. Abr.* 338. 2 *Show.* 129.

If a merchant lades goods aboard a ship, to be transported at a reasonable reward of freight to be paid to the owners, and in the night time while the ship rides in the river *Thames*, notwithstanding a competent number of men are left aboard for the guard of the ship and goods, yet several persons, under pretence of pressing seamen, seize on the men aboard, and take away the goods; an action will lie against the master, for in affect, he is paid by the merchants, for the merchant pays the owners, and the owners pay the master; so that the money of the merchant is but handed over by them to the master; adjudged and said, That though by the admiral law, the master is not chargeable *pro damno fatali*, as in case of pirates, storm, &c. where there is no negligence in him; yet because this ship was *infra corpus comitatus*, this case must not be measured by the rules of that law. 1 *Vent.* 190, 233.

If *A.* and several others take their passage in a ferry-boat, and being upon the water a tempest arises, so that they are in much danger of being drowned, upon which, to preserve their lives several of the goods were cast over-board, among which a pack of goods of *A.*'s of great value is thrown over; *A.* shall have no action against the bargemen. 2 *Bull.* 280.

It is clearly resolved, that if a carrier be robbed he shall answer the value of the goods, for he hath his hire, which implies an undertaking for the safe custody and delivery of them, which charges him at all events; and this political institution was introduced the better to secure people in their dealings, and to prevent carriers who are often entrusted with things of the greatest value, from confederating with robbers, &c. *Co Lit.* 89. 4 *Co.* 84. *Owen* 57. 1 *Roll. Abr.* 2, 124. 2 *Roll. Abr.* 367. 1 *Roll. Rep.* 79. *Hob.* 17, 18.

So if *A.* delivers a box to a carrier to carry, and he asks what is in it; and *A.* tells him, a book and tobacco, and in truth there is 100 *l.* besides, yet if the carrier is robbed, he shall answer for the money; for *A.* was not bound to tell him all the particulars in the box, and it was the business of the carrier to have made a special acceptance. Ruled by *Roll*, at the *Nisi Prius* at *Guildhall*, but in regard of the intended cheat to the carrier, he told the jury, they might consider of it in damages, but yet the jury gave the plaintiff 97 *l.* damages, abating 3 *l.* only for the carriage; *qued durum videbatur circumstantibus.* *Allen* 93.

But if *A.* being a common carrier receives, by his book-keeper, from the servant of *B.* two bags of money sealed up, containing, as was told him, 200 *l.* And the book-keeper gives a receipt for his master to this effect, *Received of, &c. two bags of money sealed up said to contain 200 l. which I promise to deliver on such a day at Exeter, into — he to pay 10 s. per cent. for carriage and risque*; though the bags contain 450 *l.* and the carrier is robbed, he shall be answerable only for 200 *l.* for this is a particular undertaking, and as it is by reason of the reward that the carrier is liable, which when the

plaintiff endeavours to defraud him of, it is but reasonable he should be barred of that remedy which is only founded on the reward. *Carth.* 485.

Of a carrier's  
interest in the  
things deliver-  
ed to his  
charge.

A carrier who hath goods delivered to him, undertakes for his hire to deliver them safely, and he hath the possession of them for no other purpose; yet he hath such a special limited property, that he may bring trover and conversion against a stranger that takes them away, or he may sue the hundred when robbed of them, because he is answerable over in damages to the absolute owner. *Co. Lit.* 89. 4 *Cō.* 83. 2 *Bulst.* 311. 1 *Sid.* 438. 1 *Mod.* 30. 2 *Sand.* 47.

So a carrier by reason of his possession, and this special kind of property, may have an appeal of larceny against one who robs him of the goods committed to his charge. 2 *Hawk. P. C.* 167.

Also a carrier by not delivering the goods, or by imbeziling of them, cannot be guilty of felony; but if he opens a pack and takes out part of the goods, with an intent to steal that part, he is guilty of felony; for a possession of part distinct from the whole was gained by wrong, and not delivered by the owner, also it was obtained basely, fraudulently and clandestinely in hopes to prevent its being discovered at all, or fixed upon any one when discovered. 1 *Rol. Abr.* 37. 1 *Hawk. P. C.* 90.

So if a carrier, after he has brought the goods to the place appointed, take them away again secretly *animo furandi*, he is guilty of felony, because the possession which he received from the owner being determined, his second taking is in all respects the same as if he were a mere stranger. 1 *Hawk. P. C.* 90.

Also if a stranger steals the goods delivered to a carrier, he may be indicted generally, as having stolen goods; so by reason of this special property, if the owner, with an intent to make the carrier answer for them, fraudulently and secretly takes them away, he is guilty of felony, and may be indicted generally, as having stolen his goods; for the injury is altogether as great, and the fraud as base, where they are taken away by the owner, as by a stranger. *Keilw.* 70. 1 *Hawk. P. C.* 94.

By *stat. 3 Car. 1. c. 1.* A carrier that travels on the Lord's day shall forfeit 20 s. See this act at large under title **Butchers.**

**Stat. 3 Will. & Ma. c. 12.** [*A. D.* 1691.] made, among other purposes, "for settling the rates of carriages of goods."

Justices once  
a year to settle  
the rates of  
carriages.

*Sett.* 24. "And whereas divers waggoners and other carriers, by combination amongst themselves, have raised the prices of carriage of goods in many places to excessive rates, to the great injury of trade; Be it therefore enacted by the authority aforesaid, That the justices of the peace of every county and other place within the realm of *England*, or dominion of *Wales*, shall have power and authority, and are hereby enjoined, and required, at their next respective quarter or general sessions after *Easter* day yearly, to assess and rate the prices of all land carriage of goods whatsoever, to be brought into any place or places within their respective limits and jurisdictions, by any common waggoner or carrier, and the rates and assessments so made,

to certify to the severall mayors and other chief officers of each respective market town within the limits and jurisdictions of such justices of the peace, to be hung up in some publick place in every such market town, to which all persons may resort for their information; and that no such common waggoner or carrier shall take for carriage of such goods and merchandizes above the rates and prices so set, upon pain to forfeit for every such offence the sum of five pounds, to be levied by distress and sale of his and their goods, by warrant of any two justices of the peace where such waggoner or carrier shall reside, in manner aforesaid, to the use of the party grieved.

5 l. penalty upon carrier, taking above the rate.

**Stat.** 21 Geo. 2. c. 28. [A. D. 1748.] made, among other purposes, "to explain and amend so much of an act passed in the third year of the reign of king *William* and queen *Mary*, [the preceding act] as relates to the settling the rates of the carriage of goods."

**Sec.** 3. "And whereas by an act made and passed in the third year of 3 W. & M. the reign of king *William* and queen *Mary*, intituled, *An act for the better repairing and amending the highways, and for settling the rates of carriage of goods*, it is enacted, That the justices of the peace of every county, and other place within the realm of *England*, or dominion of *Wales*, should have power and authority, and they were thereby enjoined and required, at their next respective quarter-session after *Easter* yearly, to assess and rate the prices of all land carriage of goods whatsoever, to be brought into any place within their respective limits and jurisdictions, by any common waggoner or carrier, to be certified and published in such manner as is therein mentioned; and that no such common waggoner or carrier should take for the carriage of such goods or merchandize, above the rates and prices so set; upon pain to forfeit for every such offence the sum of five pounds, to be levied and recovered as is by the said act directed: And whereas no rates for the carriage of goods, from distant parts of the kingdom to the city of *London*, and places adjacent, have been yet settled, and several common waggons and carriers have from thence taken occasion to enhance the price of carriage of goods to the prejudice and obstruction of trade; Be it therefore further enacted by the authority aforesaid, That if any common waggoner or carrier shall, after the tenth day of *June* one thousand seven hundred and forty-eight, demand and take any greater price for the bringing of goods to the city of *London*, or to any place within the bills of mortality, than is allowed and settled by the justices of the peace for the county or place from whence such goods are brought, for the carrying of goods from *London* to the said county or place, every such carrier or waggoner shall, for every such offence, forfeit and pay the sum of five pounds, to the use of the party grieved, to be recovered and levied in the manner by the last-mentioned act directed, or by distress and sale of his goods, by warrant under the hands and seals of any two justices of the peace for the counties of *Middlesex* or *Surry*, or city of *London*, or city and liberty of *Westminster*; and the clerk of the peace for every county and place shall, immediately

Penalty of waggons demanding a greater price for carriage than allowed.

Clerks of the peace to certify yearly the

rates for carriage.

immediately after *Easter* session yearly, certify to the lord mayor of the city of *London*, and also to the respective clerks of the peace for the counties of *Middlesex* and *Surry*, and city and liberty of *Westminster*, the rates and assessments made for the carriage of goods in pursuance of the said act, in their respective counties and places, which certificate, or an attested copy thereof, signed by the officer to whom the same shall be so transmitted, shall be taken and deemed sufficient evidence of the rates and prices set for the carrying of goods to any county or place."

## Cattle.

STATUTE 25 *Hen. 8. c. 23.* [*A. D. 1533. intituled*] "Concerning the number of sheep one should keep."

What number of sheep men may keep.

"Forasmuch as divers and sundry of the king's subjects of this realm, to whom *God* of his goodness hath disposed great plenty, and abundance of moveable substance, now of late within few years, have daily studied, practised, and invented ways and means how they might accumulate and gather together into few hands, as well great multitudes of farms, as great plenty of cattle, and in especially sheep, putting such lands as they can get to pasture, and not to tillage, (2) whereby they have not only pulled down churches and towns, and enhanced the old rates of the rents of the possessions of this realm, or else brought it to such excessive fines, that no poor man is able to meddle with it, but also have raised and enhanced the prices of all manner of corn, cattle, wooll, pigs, geese, hens, chickens, eggs, and such other, almost double above the prices which have been accustomed; (3) by reason whereof a marvellous multitude and number of the people of this realm be not able to provide meat, drink and clothes necessary for themselves, their wives and children, but be so discouraged with misery and poverty, that they fall daily to *theft*, robbery and other inconveniences, or pitifully die for hunger and cold; (4) and it is thought by the king's most humble and loving subjects, that one of the greatest occasions that moveth and provoketh those greedy and covetous people so to accumulate, and keep in their hands such great portions and parts of the grounds and lands of this realm from the occupying of the poor husbandmen, and so to use it in pasture and not in tillage, is only the great profit that cometh of sheep, which now be come in a few persons hands of this realm, in respect of the whole number of the king's subjects, that some have four and twenty thousand, some twenty thousand, some ten thousand, some six thousand, some five thousand, and some more, and some less; (5) by the which a good sheep for victual, that was accustomed to be sold for two shillings four pence, or three shillings at the most, is now sold for six shillings, or five, or four shillings at the least; (6) and a stone of clothing wooll,

The several enormities that do ensue by the greedy

wooll, that in some shires of this realm was accustomed to be sold for <sup>desire of hay-</sup> eighteen pence, or twenty pence, is now sold for four shillings or three <sup>ing many</sup> shillings four pence at the least; and in some countries where it hath been <sup>sheep.</sup> sold for two shillings four pence, or two shillings eight pence, or three shillings at the most, it is now sold for five shillings, or four shillings eight pence the least, and so are raised in every part of this realm: (7) which things, thus used, be principally to the high displeasure of *Almighty God*, to the decay of the hospitality of this realm, to the diminishing of the king's people, and to the let of the cloth-making, whereby many poor people have been accustomed to be set on work; and in conclusion, if remedy be not found, it may turn to the utter destruction and desolation of this realm, which *God* defend; (8) It may therefore please the king's highness, of his most gracious and godly disposition, and the lords spiritual and temporal, of their goodness and charity, with the assent of the commons, in this present parliament assembled, to ordain and enact, by the authority of the same, That no person or persons, from the feast of saint *Michael* the archangel, which shall be in the year of our *Lord God* 1535, shall keep, occupy, or have in his possession, in his own proper lands, nor in the possession, lands, nor grounds of any other, which he shall have or occupy in farm, nor otherwise have of his own proper cattle, in use, possession, or property, by any manner of means, fraud, craft or covin, above the number of two thousand sheep at one time, within any part of this realm, of all sorts and kinds; (9) upon pain to lose and forfeit for every sheep that any person or persons shall have or keep above the number limited by this act, *iii. s. iv. d.* the one half to the king our sovereign lord, and the other half to such person as will sue for the same, by original writ of debt, bill, plaint or information in any court of record, in which suit the defendant shall not wage his law, nor have any essoin or protection allowed."

*Seet. 2.* "Provided alway, That lambs shall not be accounted of the number of the sheep prohibited by this act, so long as they be under the age of a year, and not above."

Lambs under one year old shall not be counted sheep; Sheep coming by executorship or marriage.

*Seet. 3.* "Provided alway, That if any person having sheep of his own, happen to be made executor, or to be administrator to any person which had sheep at his death, or happen to be married to any person which shall happen to have sheep at the time of the marriage, by reason whereof the person so being executor or administrator, or being so married, shall happen by such means to be advanced, and have above the said number of two thousand sheep, that then in every such case the person so advanced to lose no penalty for having above the number of two thousand sheep by such means, so that within one year next after such advancement, the person so advanced, from time to time, as often as any such case shall happen, do put to sale, or otherwise dispose so many of the said sheep so to him advanced, or else of his own sheep, that he had before, so that above one year he shall not keep, have or occupy by any such means, or otherwise by any fraud or covin, any more number of them than is before limited by this act, upon the pain before rehearsed."

*Seet. 4.* "Provided also, That if any person by his last will and testament give to any child within age any number of sheep, and appoint them

Sheep be- ment given to any child within age any number of sheep, and appointed by them



will to a child within age. them by his said will to be kept by his executors, or by any other person, until such time as the said child shall come to a certain age limited by his will, that then in every such case, after the death of the testator, the said sheep, so being in the possession and occupation of the executors, or of any other person, to the use of any such child within age, for that time only that the said child shall be within the age that he shall be limited to have the said sheep by the will of the testator, shall not be accounted against the said executors, nor any person so having the said sheep, for the intent aforesaid, any of the number of the sheep prohibited by this act; any thing in this act to the contrary thereof notwithstanding."

Justices of the peace shall inquire of the offenders of this act.

*Sett. 5.* " And is further enacted, That the justices of the peace of every shire shall have power and authority to enquire of the offenders of this act, as well by the oaths of twelve men, as by information of any of the king's subjects, and to make such like process upon every presentment or information concerning this act, as they use commonly to do upon presentments before them of trespass; and that no person being convicted by confession or otherwise, that he hath done or attempted contrary to this act, shall be put to any less fine than after the rates of forfeitures afore limited by this act."

Within what time the suit shall be commenced against an offender.

*Sett. 6.* " Provided always, That no person shall be put to any answer or loss of any forfeiture by virtue of this act, at the suit any of the king's subjects, by any original writ of debt, bill, plaint or information, except the suit be commenced within one year next after the offence done or committed contrary to this act: (2) Nor that any person shall be put to answer, nor to any loss of any forfeiture by virtue of this act, by reason of any presentment, action or information at the king's suit, except the same presentment, action or information be had and made for the king within three years next after the offence done or committed."

Every person temporal may keep upon his inheritance, &c. as many sheep as he will.

*Sett. 7.* " Provided alway, That all and every person and persons, being the king's temporal subjects of this realm, and born under his obedience, which at this present time, or at any time hereafter shall have, or be seized of inheritance, in possession or in use, or that now hath, or hereafter shall have juncture in use or possession, or be or shall be tenant in dower, or by the curtesy of *England*, of or in any manors, lands, tenements, pastures, feedings or liberties, or foldage within any part of this realm of *England*, *Wales* or the marches of the same, that every such person and persons, having any such possession to his own use, and every such person and persons, to whose use any other person and persons now is, or be, or hereafter shall be seized of any such estate, as is before rehearsed, may at all times hereafter have, enjoy, keep and maintain upon the same their own demesne lands, and all other their pastures, feedings and fold-courses, which they so have, as many their own sheep and lambs in number to their own proper use, profit and behoof, as they or any of them of right had, or lawfully might have had and kept upon the same, or upon any part thereof, at any time before the making of this present act; this act, or any thing therein contained or specified to the contrary in any wise notwithstanding."

*Sett. 8.*

*Sett.* 8. And over that be it enacted by the authority aforesaid, That in case any such person or persons, having any such estate in use or in possession, of or in any manors, lands, tenements, pastures, feedings or liberties of fold-courses, as is before expressed, have or do keep upon the same their possessions the number of two thousand sheep, or above, the same person or persons so having the number of two thousand sheep, or above, shall not in any wise keep, sustain or have any sheep above, or beside the said number of two thousand, upon any lands, pastures or feedings, which the same person or persons have, or hereafter shall have, or take in ferm or otherwise, upon such like pains and forfeitures for the same, as be limited in the said act; that is to say, for every sheep over and above the said number of two thousand, three shillings four pence: (2) And in case the said demesne lands, tenements, pastures, feedings and liberties of fold-courses of any person or persons before rehearsed, suffice not for the feeding, pasturing and keeping of two thousand sheep, as is afore said, that then every such person shall and may have, sustain or feed upon his said demesne lands, and upon his ferm-holds, which he lawfully may have, to the said number of two thousand sheep, and not above, upon pain of forfeiture for every sheep above that number, *iii. s. iv. d.*"

*Sett.* 9. " Provided alway, and be it enacted, That it shall be lawful to every person or persons within this realm, keeping a household, to have from time to time such convenient number of sheep over and above the number expressed in this act, as shall be necessary for the only expences of his household, to be provided, kept and fed in and upon his own lands, or other lands, such as he can or lawfully may have, or provide for, in ferm or otherwise; any thing in this present act contained to the contrary notwithstanding; (2) so that the same householder at no one time shall have or keep, for the expences of his household, or by colour of the same, over and above the number to him limited by this act, any number of sheep more than shall suffice for the only expences of his household for one year, without fraud or covin; any thing in this present act mentioned or expressed to the contrary notwithstanding."

*Sett.* 10. " Be it also further enacted by the authority aforesaid, That no manner of person or persons, of what degree soever he or they be, being lord or lords, owner or owners, farmer or farmers, or of or in any liberty of fold-courses, within any town, tything, village or hamlet within any of the counties of *Norfolk* and *Suffolk*, from and after the feast of the *Nativity* of our Lord God next coming, shall take in farm, for term of years, or otherwise, any quilleys of lands or pastures, that is to say, any number of acres of land or pasture, appertaining to any other person or persons, lying and being within the limit, extent or precinct of the said liberty of the said fold-courses; (2) but that they shall permit and suffer the said persons, having or being, for time, owner or owners, lessee or lessees, of the said quilleys, to manure and pasture the said quilleys; (3) and also to suffer the sheep of the said owner or owners, farmer or farmers of the said quilleys, after the rate of the same quilleys, to go with the flock of the owner, farmer or occupier of the said liberty or liberties of the said fold-courses, paying the customary charges for the keeping and feeding of the same, after

Two thousand  
sheep may be  
kept by any  
person upon  
demesne and  
farms.

Sheep for the  
maintenance  
of his house  
above two  
thousand.

How fold-  
courses in  
*Norfolk* shall  
be used, and  
quilleys of  
land.

ter the rate and use of the country there commonly used, without any interruption therein to be made by the said owner or owners, farmer or formers, or occupiers of the said liberties; (4) upon pain of forfeiture for every time that any such person having any such quillet that shall be so letted or disturbed of feeding, keeping or pasturing any of his sheep, to be so fed and kept after the rate of *his* said quillet, for every such sheep *iii. s. iv. d.*"

To which fort  
of quillits this  
statute doth  
extend, and  
to which not.

*Seet. 11.* " Provided alway, That this act, or branch concerning quillits, or any thing therein contained, shall not in any wise be available to any tenant, owner or occupier of any such quillet or quillits, to claim, have or use hereafter any such pasture, or feeding of his sheep, in or with any such fold-courses, but only where the tenants, owners and occupiers of any such quillits have had, or might have had heretofore of right and duty, or used to have pasture and feeding in the said fold-courses, by reason of their tenures and occupations of the same quillet and quillits, and none otherwise; (2) and where they have not used, ne ought to have any sheep fed or kept within any such fold-courses, by reason of the said tenures, That the owners or occupiers of such fold-courses may take such quillits, lying within their said fold-courses, in farm, agreeing with the owner or occupiers of the said quillits for the same."

Six score of  
sheep shall be  
accounted an  
hundred.

*Seet. 12.* " And forasmuch as the number of the *C.* of sheep in every country be not like, in some country the great *C.* where six score is accounted for the *C.* and some country but only five score, it is eft declared by this present act, that the number of two thousand sheep, limited to every person by this act, shall be accounted ten *C.* for every thousand, after the number of the great hundred, and not after the less hundred, so that every thousand shall contain twelve hundred, after the less number of the hundred."

When lambs  
shall be taken  
for sheep.

*Seet. 13.* " It is also further provided by the authority aforesaid, That lambs under the ages of one whole year, and as much as shall be from the time of the falling of them unto the feast of the *Nativity* of *St. John Baptist*, in any year to come, shall not be adjudged, ne taken for sheep, prohibited in this statute; any thing in this act to the contrary notwithstanding."

No man shall  
take above  
two farms.  
32 H. 8. c.  
28.

*Seet. 14.* " It is also further enacted by authority aforesaid, That no manner person, after the said feast of the *Nativity* of our Lord, shall receive, or take in farm for term of life, years or at will, by indenture, copy of court-roll, or otherwise, any more houses and tenements of husbandry, whereunto any lands are belonging, in town, village, hamlet or tithing within this realm, above the number of two such holds or tenements; (2) and that no manner person shall have or occupy any such holds, so newly taken, to the number of two, as is before expressed, except he or they be dwelling within the same parishes where such holds be; upon pain of forfeiture for every week that he or they shall have, occupy or take any profits of such holds, contrary to this act, *iii. s. iv. d.* The one moiety of which forfeiture to be to the king our sovereign lord, and the other moiety to the party that will sue for the same in any of the king's courts,

courts, by bill, plaint, information or otherwise, within one year next after such contempt and offence committed and done, in the which no effoin, protection, ne wager of law shall be admitted or allowed."

*Señ. 15.* " It is also further enacted by authority aforesaid, that the statutes made the fourth year of the noble prince, king *Henry* the seventh, and the seventh year of the reign of our sovereign lord the king that now is, concerning the decay of towns, and maintenance of tillage and husbandry, shall be good and effectual in every thing according to the true purport and intent of the same; any thing in this present act to the contrary notwithstanding."

*Señ. 16.* " Provided also, That it may be lawful to all spiritual persons, and every of them, to keep such and as many sheep upon their own lands, and after such form and manner, and none otherwise, as they might have done afore the making of this act; any thing mentioned in the same to the contrary notwithstanding."

**Stat. 3 & 4 Ed. 6. c. 19.** [*A. D. 1549. intituled*] " An act for buying and selling of rother beasts and cattle."

" Be it enacted by the authority of this present parliament, That no person or persons at any time, from and after the feast of the *Annunciation* of our lady next coming, shall buy, or commune and conclude to buy any manner of oxen, steers, ronts, kine, heifers or calves, but only in open fair or market where the same shall happen to be brought and put to sale; (2) and shall not sell the same again alive, at and in the market or fair where he bought the same, during the time of the said fair or market; (3) upon pain of forfeiture of the double value of such cattle bought or sold contrary to the tenor of this present act."

*Señ. 2.* " Provided alway, and be it further enacted by the authority aforesaid, That it shall be lawful for all and every person and persons, to buy any oxen, steers, ronts, kine, heifers and calves, or any of them, out of any open fair or market, for his or their provision for their household, teem or dairy, at his or their will and pleasure, to be employed and spent only in keeping and maintenance of his or their house, or for their teem or dairy, and not otherwise."

*Señ. 3.* " And be it further enacted by the authority aforesaid, That no person being a butcher, and using the craft and mystery of butchery, shall at any time after the said feast buy any fat oxen, steers, ronts, kine, heifers, calves or sheep, and sell or cause to be sold the same again alive, upon pain of forfeiture of every such ox, steer, ront, cow, heifer, calves or sheep bargained or sold contrary to the form of this present act."

*Señ. 4.* " Provided alway, That all and every person and persons being a butcher, and using the art and mystery of butchery, shall and may at his and their will and pleasure buy any fat oxen, steers, ronts, kine, heifers, calves and sheep, or any of them, out of any open fair or market: So that such butcher sell not, nor cause the same to be sold again alive, as is aforesaid; any thing contained in this act to the contrary notwithstanding: (2) The one moiety of all which forfeitures to be to our sovereign lord the

king, his heirs and successors, and the other moiety to him or them that will sue for the same in any of the king's courts of record, wherein no wager of law, essoin or protection shall be allowed for the defendant or defendants. (3) This act to endure to the end of the next parliament. Continued in part by 3 Car. 1. c. 4. and further continued by 16 Car. 1. c. 4. and altered by 15 Car. 2. c. 8. See *this last act under Butchers*.

By the *stat. 5 & 6 Ed. 6. c. 14. sect. 9, 10.* No person shall sell his cattle within five weeks after he bought them; and the justices may determine the same. See these two sections at large under *Badgers*, p. 194.

**Stat. 2 & 3 Phil. & Ma. [A. D. 1555. intituled]** "An act for keeping of milch kine, and for breeding and rearing of calves."

"Forasmuch as of late years a great number of persons within this realm have laid their lands, farms and pastures to feeding of sheep, oxen, runts, schrubs, steers and heifers, and such other like cattle, having no regard or care to breed and rear up young beasts and cattle, whereby is grown great scarcity of cattle, and victual necessary for the sustenance of divers sorts of people within this realm, and more is like to be, if speedy remedy be not provided:"

By the *stat. of 7 Jac. 1. c. 8.* this statute shall extend to grounds hereafter to be enclosed.

A cow shall be kept for sixty sheep, and a calf reared for 120 sheep.

A milch cow shall be kept for ten beasts fed, and for two kine a calf reared.

*Sect. 2.* "It is therefore by the authority of this present parliament enacted, That every person which, from the feast of the *Purification* of our lady next ensuing, shall keep or feed above the number of sixscore *shere* sheep for the most part of the year, upon his or her several pastures, lands, feedings or farms apt or meet for milch kine, and wherein no other person hath at the making of this present act, common for any cattle at any time of the year, shall by authority of this act, yearly so long as he shall keep or feed the said number of sixscore *shere* sheep, for every threescore *shere* sheep so kept or fed, keep one milch cow, and shall breed and rear up yearly for every sixscore sheep so kept as is aforesaid, one calf; (2) upon pain of forfeiture for every month that any such person shall not for every threescore *shere* sheep, as is aforesaid, keep and feed one milch cow, xx s. for every cow so not kept: (3) And for lack of rearing and breed of one calf for every sixscore *shere* sheep, to forfeit likewise xx s. for every calf so not reared and fed."

*Sect. 3.* "And that every person which after the aforesaid feast of the *Purification* of our lady, upon his or her several pastures as afore is said, shall keep or feed above the number of twenty oxen, runts, shrubs, steers, heifers or kine, shall by authority of this act, for every ten beasts of the said sorts so kept and fed, keep and nourish one milch cow, and breed, rear and waine yearly, and keep for one whole year, one calf for every two milch kine so charged to be kept; upon the several pains and forfeitures afore rehearsed, except the said calf or calves shall chance to die within the said year, without covin or fraud thereto added; (2) the one half of which said forfeitures shall be to the use of our sovereign lord and lady the king and queen's majesties; and the other half to the use of the party, that within one year after the offence committed will sue for the same in any of the king

king and queen's majesties courts of record, or before the justices of peace in the same shire where any such cause of forfeiture shall be had, at the general sessions (who by authority of this act shall have power to hear and determine the said offences) by bill, information, presentment, action of debt or detinue; in which action or suit, no essoin, protection, wager of law or licence to the contrary shall be allowed."

*Seet.* 4. " Provided always, That this act, nor any clause thereof, shall be extended to bind any person to keep milch kine, nor yet to breed or rear up calves, as afore is expressed, for such sheep or other beasts as the same persons shall keep or feed, to the intent only to be spent in his or their house or houses, without fraud or covin. (2) This act to endure only unto the end of seven years next following the feast of the *Purification* of our lady aforesaid, and from thence to the end of the parliament then next following. Made perpetual by 13 *El. c.* 25.

*Stat.* 7 *Jac.* 1. *c.* 8. [*A. D.* 1609. intituled] " An act to enlarge an act of parliament made in the second and third year of king *Philip* and queen *Mary*, intituled, *An act for the keeping of milch-kine, or breeding and rearing of calves.*"

" Whereas in the second and third years of king *Philip* and queen *Mary*, a profitable act was made for the avoiding of the scarcity of cattle and victual, intituled, *An act for the keeping of milch-kine, and for the breeding and rearing of calves*; (2) which act, being then made only to continue to the end of the next session of parliament, was found so necessary for the good of the commonwealth, that after many continuances of it by several parliaments, it was at length, in the thirteenth year of the reign of our late queen *Elizabeth* of happy memory, made perpetual: (3) Because the said act hath not produced so good effect as was expected, in respect it did and doth extend only to such pasture grounds as were inclosed before the said act, and wherein no person, at the making of the said act, had common for any cattle at any time of the year, and not to such pasture grounds as sithence have been converted from tillage, and inclosed, or taken out of commons, and inclosed, whereas in all equity and conscience, many of the said late inclosures deserve no way to be kept and enjoyed with more liberty, than the said former and antient inclosures."

*Seet.* 2. " Be it therefore enacted by the king's most excellent majesty, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That the said former act, and the pains and penalties therein contained, shall, from and after the feast of saint *Michael* the archangel now next ensuing, be extended and construed, taken, expounded and adjudged to extend as fully to all intents, constructions and purposes, with the same provisoes, and in like manner, to all and every the grounds apt and meet for milch-kine, since the making of the said act, inclosed, or hereafter to be inclosed, and not to be laid open to common at any time of the year, and to the occupiers thereof, as to the grounds before the said act made several, and wherein

Sheep kept, or beasts fed to be spent in the owner's house.

2 & 3 P. & M. c. 3.

13 *Eliz. c.* 25.

The statute of 2 & 3 P. & M. c. 3. shall be extended to grounds since inclosed or hereafter to be inclosed.

none had interest of common at the time of making the said act, and to the occupiers thereof, and as if the said grounds so lately inclosed, and hereafter to be inclosed and made severall, had been so inclosed, and held severall at the time of the making the said act, and as if no person or persons, other than the owners thereof, then had interest of common therein; any word, sentence or clause in the said former act to the contrary in any wise notwithstanding."

By *stat. 3 Car. 1. c. 1.* No drover with any cattle shall travel on the Lord's day, on pain of twenty shillings. See the act at large under *Butchers*, page 489.

*Stat. 18 Car. 2. c. 2.* [A. D. 1666. intituled] "An act against importing cattle from *Ireland*, and other parts beyond the seas, and fish taken by foreigners."

15 Car. 2. c. 7. "Whereas by an act of this present parliament, intituled, *An act for the encouragement of trade*, amongst other things, some provision was made for the preventing of coming in of vast numbers of cattle, whereby the rents and values of the land of this kingdom were much fallen, and like daily to fall more, to the great prejudice, detriment and impoverishment of this kingdom; which nevertheless hath by experience been found to be ineffectual; and the continuance of any importation, either of the lean or fat cattle, dead or alive, herein after specified, not only unnecessary, but very destructive to the welfare of this kingdom: (2) Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, That such importation, from and after the second day of *February* in this present year one thousand six hundred sixty and six, is a publick and common nuisance, and shall be so adjudged; deemed and taken to be to all intents and purposes whatsoever. (3) And that if any great cattle, sheep or swine, or any beef, pork or bacon (except for the necessary provision of the respective ships or vessels in which the same shall be brought, not exposing the same, or any part thereof to sale) shall from and after the said second day of *February*, by any wise whatsoever, be imported or brought from beyond seas into this kindom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*; that then it shall and may be lawful for any constable, tithingman, headborough, churchwardens or overseers of the poor, or any of them, within their respective liberties, parishes or places, to take and seize the same; (4) and keep the same during the space of eight and forty hours in some publick or convenient place where such seizure shall be made; within which time if the owner and owners, or any for them or him, shall make it appear unto some justice of the peace of the same county where the same shall be so seized, by the oath of two credible witnesses; which oath the said justice of peace is hereby impowered and required to administer; That the same were not imported from *Ireland*, or from any other place beyond the seas; not herein after excepted, after the said second day of *February*, then the same,

Importation of cattle a common nuisance.

Enforced by 20 Car. 2. c. 7. sect. 3.

Importation of bacon provided for by 5 & 6 W. & M. c. 2. sect. 4.

The penalty.

same, upon the warrant of such justice of peace, shall be delivered without delay : (5) But in default of such proof and warrant, then the same to be forfeited : One half thereof to be disposed to the use of the poor of the parish where the same shall be so found or seized ; the other half to be to his or their own use that shall so seize the same."

*Sett.* 2. " And for the better encouragement of the fishery of this kingdom, be it further enacted by the authority aforesaid, That if any ling, herring, cod or pilchard, fresh or salted, dried or bloated, or any salmon, eels or congers taken by any foreigners, aliens to this kingdom, shall be imported, uttered, sold or exposed to sale in this kingdom : That then it shall and may be lawful for any person or persons to take and seize the same ; the one half thereof to be disposed of to the use of the poor of the parish where the same shall be so found or seized ; the other half to his or their own use, which shall so seize the same." Encouragement of fishery. Enforced by 1 Geo. 1. stat. 2. c. 12. f. 2.

*Sett.* 3. " Provided always, That nothing in this act shall be construed to hinder the importation of cattle from the *Isle of Man* in this kingdom of *England*, so as the number of the said cattle do not exceed six hundred head yearly : (2) And that they be not of any other breed than of the breed of the *Isle of Man* ; (3) and that they be landed at the port of *Chester*, or some of the members thereof, and not elsewhere." Isle of Man;

*Sett.* 4. " This act to continue until the end of seven years, and from thence to the end of the first session of the next parliament. Made perpetual by 32 *Car.* 2. c. 2. *sett.* 2.

*Stat.* 20 *Car.* 2. c. 7. [ *A. D.* 1668. intituled ] " An additional act against the importation of foreign cattle."

" Whereas by an act of this present parliament, intituled, *An act against importing cattle from Ireland, and other parts beyond the seas, and fish taken by foreigners* ; amongst other things, provision was made against importation of cattle from parts beyond the seas : And it was thereby enacted, That such importation from and after the second day of *February*, which was in the year one thousand six hundred sixty-six, was a publick nuisance, and should be so adjudged, deemed and taken to all intents and purposes ; (2) and that if any great cattle, sheep or swine, or any beef, pork or bacon, (except for the necessary provision of the respective ships or vessels in which the same should be brought, not exposing the same to sale) should from and after the second day of *February*, by any wise whatsoever, be imported or brought from beyond the seas into this kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, That then it should and might be lawful for any constable, tithingman, headborough, church-warden, or overseers of the poor, or any of them, within their respective liberties, parishes or places, to take and seize the same ; (3) and keep the same, during the space of eight and forty hours, in some publick or convenient place where such seizure should be made ; within which time, if the owner or owners, or any for them or him, should make it appear unto some justice of the peace of the same county where the same should so be seized, by the oath of two credible witnesses 18 Ca. 2. c. 2.  
Importation of cattle from beyond sea a nuisance.



witnesſes, that the ſame were not imported from *Ireland*, or from any other place beyond the ſeas not therein after excepted, after the ſaid ſecond day of *February*, then the ſame, upon the warrant of ſuch juſtice of peace, ſhould be delivered without delay ; but in default of ſuch proof and warrant, then the ſame to be forfeited ; one half thereof to be diſpoſed to the uſe of the poor of the pariſh where the ſame ſhall be ſo found or ſeized, the other to be to his or their own uſe that ſhould ſeize the ſame."

*ſeſt.* 2. " Notwithſtanding which act, and the good proviſion thereby, great number of cattle, ſheep and ſwine, and great quantities of beef, pork and bacon, have ſince the time limited by the ſaid act been imported from *Ireland*, and other places beyond the ſeas, as well in foreign as *Engliſh* ſhips and veſſels, contrary to the good intent of the ſaid act, and in continuance of the ſaid nuſance, and in high contempt of the authority of parliament : (2) And divers church-wardens, conſtables, tithingmen and overſeers of the poor, living near the ſea, for their own private lucre, having combined with the owners of ſuch cattle, ſheep, ſwine, beef, pork and bacon imported, as aforeſaid, or with their agents, have colourably ſeized, and afterwards privately and fraudulently ſold the ſame at very low and inconfiderable rates, to the ſaid owners or their agents : (3) And other of the ſaid officers, who have diſcharged their duties in the execution of the ſaid act, have been moleſted therefore, and ſeveral actions, ſuits, complaints and informations have been brought and preſented againſt ſome of them in counties and places far diſtant from their habitations, to their great charge and diſcouragement. (4) For the vindication therefore of the authority of parliament from ſuch bold affronts, and the indemnifying as well of ſuch officers, who have faithfully endeavoured the execution of the ſaid act (although they have not ſtrictly purſued the ſame in every circumſtance) as of ſuch other perſon and perſons who have acted in their aid and aſſiſtance, and for the better and further ſuppreſſion of the ſaid nuſance ; (5) Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That all and every conſtable, tithingman, headborough, church-warden, and overſeer of the poor, and every other perſon or perſons who have acted in, or concerning the ſeizure, keeping, detaining or diſpoſing of any cattle, ſheep, ſwine, beef, pork or bacon, imported contrary to the ſaid act, after the ſaid ſecond day of *February*, ſhall be and are hereby ſaved harmleſs, and indemnified in that behalf, againſt the owner or owners thereof at the time of ſuch importation, their executors and adminiſtrators, and every other perſon and perſons claiming from, by or under their gift, grant or other diſpoſition ; and againſt all and every perſon and perſons, to whom any fraudulent ſale hath been made after ſuch importation, as aforeſaid, and their and every of their executors and adminiſtrators.

All officers who have ſeized any imported cattle, ſaved harmleſs.

Importation of bacon provided for by 5 & 6 W & M. c. 2. ſeſt. 4.

Any perſon may ſeize imported cattle, and deliver

*ſeſt.* 3. " And it is provided, and further enacted, That not only the conſtables and officers above-named, but every or any other inhabitant or inhabitants of or within the liberties, pariſhes, and places where ſuch importation

portation shall be made, shall and may take and seize the cattle and goods <sup>them to the</sup> so imported, and after such seizure shall forthwith deliver or cause them to <sup>officer.</sup> be delivered to the constable, tithingman, headborough, church-warden, or overseers of the poor, or any of them within the respective liberties, parishes and places aforesaid, to be kept, ordered, and disposed in the manner, and to the uses and purposes in this act, and in the said recited act, or either of them mentioned and directed.

*Señ. 4.* “ And it is further enacted, That if no seizure at all shall be made by the officers or inhabitants, nor any of them, within the liberty, parish, or place where such cattle or goods, as aforesaid, shall be first imported, then such liberty, parish, and place, and the inhabitants thereof, neglecting to make such seizure, for every default shall forfeit the sum of one hundred pounds, which shall be employed for the use of the house of correction within the county or liberty where such default of seizure shall be; (2) and the monies so forfeited, and other the penalties and forfeitures which are to accrue to the poor by virtue of this act, and the said recited act, or either of them, shall be accounted for to such persons, at such times, and in such manner, as the overseers of the poor are appointed to account by the statute made in the three and fortieth year of the reign of 43 El. c. 2. queen *Elizabeth*, chapter the second.

*Señ. 5.* “ And be it further enacted by the authority aforesaid, That every ship or vessel, with all her tackle and apparel, in which any great cattle, swine, sheep, beef, pork or bacon, from and after the four and twentieth day of *March* in the year of our lord one thousand six hundred sixty and seven, shall be imported from *Ireland*, or any other parts beyond the seas, into the kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, and out of which they or any of them shall be put on shore there, shall be forfeited: (2) And that it shall and may be lawful to and for any person or persons, within the space of one year after such importation, to take and seize the same ship or vessel, with all her tackle and apparel, and to make sale thereof to the best advantage; and that one half of the monies to be raised by such sale, shall be disposed of to the use of the poor of the parish where the same shall be so seized, the other half to be to his or their use that shall so seize the same: (3) And also that it shall and may be lawful to and for any justice of peace of the county, or chief officer of the port-town, in or near the place where such importation shall be made, or where any of the cattle, sheep, swine, beef, pork or bacon so imported shall be driven or brought, by warrant under the hand and seal of such justice of the peace, or chief officer, to cause to be apprehended all and every the malters, mariners, and seamen, having charge of, or belonging to such ship or vessel in which such importation shall be made; (4) and all and every other person and persons acting or employed in the landing, driving, attending on, or taking care or charge of the said cattle, sheep, swine, beef, pork or bacon imported, as aforesaid, and them to commit to the common gaol of the said county, there to remain without bail or mainprize, for the space of three months.

*Señ. 6.* “ And be it further enacted and declared by the authority aforesaid, That whensoever, and as often as it shall happen, either through any said, If any officer neglect to seize, another fraudulent

The forfeiture of such as neglect to seize.

Ships bringing cattle, &c. from beyond sea, shall be forfeited, seized and sold;

The money raised thereby, one half to the poor, the other to the informer or seizer.

The seamen to be apprehended, and all others concerned, and sent to the common gaol.

may take them  
and have the  
one half, gi-  
ving the other  
to the poor.

fraudulent agreement or unfaithful connivance of any constable, headborough, tithingman, church-warden, or overseer of the poor, or that it shall happen any otherwise howsoever, that any great cattle, sheep, swine, beef, pork or bacon, after the first seizure of them, or any of them, by virtue of the aforesaid act, shall be driven, brought, carried into, or found in any other parish or place, than where the same shall be first seized, as aforesaid; that then and so often, and from time to time, it shall and may be lawful to and for the constable, tithingman, headborough, church-warden, or overseer of the poor of every or any such other parish or place where such great cattle, sheep, swine, beef, pork or bacon, shall be brought, driven or carried into, or found, as aforesaid, to seize, take and dispose the same, and every or any of them as forfeited, the one moiety thereof to the use of the poor of such other parish or place where such seizure shall be made, the other to the use of such officer or officers who shall seize the same, as aforesaid; any other or former seizure or seizures in any other parish or parishes, place or places, notwithstanding.

Trial in the  
county where  
the cause of  
action arises.

*Seet. 7.* " And be it further enacted by the authority aforesaid, That if any action, bill, plaint, suit or information is or shall be commenced, or prosecuted against any person or persons, for any seizure, or other thing made or done, or to be made or done, by virtue or colour of this, or the aforesaid act; and upon the trial of such action, bill, plaint, suit or information, it shall not be proved to the jury that shall try the same, that the cause of such action, bill, plaint, suit or information did arise within such county where such action, plaint, suit or information is laid and tried, the defendant and defendants shall be found not guilty, without having regard to any evidence given by, or for the plaintiff, informer or prosecutor.

General issue.

Defendant to  
have treble  
costs.

*Seet. 8.* " And be it further enacted by the authority aforesaid, That if any action, bill, plaint, suit or information hath been, or shall be commenced or prosecuted against any person or persons, for any seizure or other thing done or made, or to be done or made in pursuance or execution of this, or the aforesaid act; such person or persons so sued in any court whatsoever, may plead the general issue, and give this and the aforesaid act, and the special matter in evidence for their excuse or justification: (2) And if the plaintiff or prosecutor shall become nonsuit, or forbear prosecution, or suffer discontinuance, or if a verdict pass against him in any such action, bill, plaint, suit or information, as aforesaid, the defendants shall have treble costs, for which they shall have the like remedy, as in any case where costs by the law are given to the defendant.

Proviso to im-  
port cattle  
from the isle  
of Man.

*Seet. 9.* " Provided always, That nothing in this act shall be construed to hinder the importation of cattle from the isle of *Man* into this kingdom of *England*, so as the number of the said cattle do not exceed six hundred head yearly, and that they be not of any other breed than of the breed of the isle of *Man*, and that they be landed at the port of *Chester*, or some of the members thereof, and not elsewhere.

Confederacy  
to elude this  
acts incurs a

*Seet. 10.* " And it is lastly enacted, That if any person or persons shall wilfully and fraudulently conspire, confederate, or agree together, to avoid

or

or evade the seizures or forfeitures upon importation of cattle or goods in this present act particularly specified, and the same shall put in execution; then every such person and persons, being thereof lawfully indicted or presented within one year next after such offence by him or them committed, and being thereof lawfully convicted or attainted at any time after, according to the laws of this realm, shall incur the dangers, penalties, pains and forfeitures contained and provided in and by the statute of provision and *præmunire*, made in the sixteenth year of the reign of king Richard the second." *Præmunire*, 16 R. 2. c. 5.

By Stat. 22 & 23 Car. 2. c. 7. Cutting, maiming, wounding and killing of horses, sheep, beasts and other cattle, is felony. See this act at large under title *Burning*, page 478.

Stat. 32 Car. 2. c. 2. [A. D. 1680. Intituled] "An act prohibiting the importation of cattle from *Ireland*."

"Whereas an act of parliament was made in the eighteenth year of the reign of our sovereign lord the king that now is, intituled, "An act against importing cattle from *Ireland*, and other parts beyond the seas, and fish taken by foreigners;" which was to continue until the end of seven years, and from thence to the end of the first session of the next parliament, which is now expired :

Señ. 2. "And forasmuch as by long experience the said law hath been found to be very beneficial to this kingdom, (2) Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That the said act, and every clause, article, and thing therein contained, together with the additions and alterations herein after mentioned and expressed, shall from and after the second day of *February*, which shall be in the year of our lord God one thousand six hundred and eighty, be revived, continue and remain, and is hereby revived and continued in force, to all intents, constructions and purposes for ever." A recital of 18 Car. 2. c. 2. The benefit of it. That 18 Car. 2. c. 2. be revived and continued for ever.

Señ. 3. "And be it further enacted by the authority aforesaid, That not only the constables, officers, and inhabitants mentioned in the aforesaid recited act, but any and every other person and persons whatsoever, shall and may take and seize, in any place or places whatsoever, the cattle and goods imported contrary to the said recited act; (2) and that all and every such person and persons, that shall seize as aforesaid, shall from time to time have the benefit and advantage hereafter given by this act to any seizer or seizers whatsoever." Not only officers, but all persons may seize Irish cattle and goods imported. All seizers to have benefit.

Señ. 4. "And to prevent all fraudulent seizures, sales and compositions, to be made by any person or persons whatsoever, in any parish or place whatsoever, where any great cattle, sheep or swine shall be imported or found contrary to this or the act aforesaid, and to make the prohibitions therein more effectual;

Seizor shall  
cause the cattle  
to be killed.  
Hides and  
tallow to be  
the seizors, the  
rest to be  
distributed to  
the poor by  
the church-  
wardens, &c.

Seizors,  
churchwar-  
dens and over-  
seers on ne-  
glect forfeit  
40s. for each  
great cattle,  
and 10s. for  
each sheep or  
swine. To be  
levied by  
distress and  
sale of chattels  
by warrant of  
any justice,  
&c.

For want of  
distress, the  
party to be  
imprisoned  
without bail  
three months.

Nothing here-  
in to hinder  
importation of  
stock fish and  
eels.

Any person  
may import  
stock fish and  
live eels.

Altered as to  
foreigners, by  
1 Geo. 1. stat.  
2. c. 18. sect.  
1. Want of  
sufficient pro-  
vision against  
importation of  
mutton and  
lamb. No  
mutton or

*Seet. 5.* "Be it enacted by the authority aforesaid, That all and every the respective seizor or seizors of such cattle, sheep or swine, shall within six days after conviction and forfeiture thereof, cause the said cattle, sheep and swine to be killed; (2) and the hides and tallow of such great cattle, sheep and swine, shall be and remain to the use of the said seizor or seizors, and the remainder of the said great cattle, sheep and swine shall be forthwith distributed amongst the poor of the said parish, by the churchwardens and overseers of the poor there, or some of them, upon notice thereof to be given them, or any of them by such seizor or seizors, as aforesaid; any thing in the said former law, or any other law, to the contrary notwithstanding."

*Seet. 6.* "And be it further enacted, That in case the said seizor or seizors, or the churchwardens and overseers of the poor, shall fail in their respective duties, in the execution of this act, they and every of them respectively, shall forfeit the sum of forty shillings for every one of the great cattle, and ten shillings for every sheep or swine, which should have been killed and distributed, as aforesaid; one moiety thereof to the poor of the said parish, and the other moiety to the informer; (2) The same to be levied by distress and sale of the goods and chattels of the person or persons so offending, by warrant under the hand and seal of any justices of the peace of the said county or place where the said offence shall be committed, upon confession of the party, view of the said justice, or oath thereof made before such justice by one or more credible witness or witnesses, other than the informer: which oath the said justice hath hereby power to administer, rendering the overplus to the owners thereof, necessary charges of distraining being first deducted. (3) And for want of such distress, the said offender or offenders to be committed to the common gaol of the said county or place, there to remain for the space of [three months without bail or mainprize."

*Seet. 7.* "Provided always, and be it further enacted by the authority aforesaid, That neither this act, nor any other act whatsoever hereafter made, shall either hinder or be construed to extend to hinder the importation of stock-fish or live eels into this kingdom of *England*; (2) but that it shall and may be lawful to and for all and every person and persons whatsoever, to import into this kingdom of *England* any stock fish or live eels as aforesaid; any thing in this act, or any other law, statute, usage or custom to the contrary in any wise notwithstanding."

*Seet. 8.* "And whereas the present laws do not sufficiently provide against the importation of mutton and lamb out of *Ireland*, and other parts beyond the seas into this kingdom, but that great quantities thereof are daily imported and sold, to the great loss and prejudice of this kingdom; (2) Be it therefore enacted by the authority aforesaid, That from and after the said second day of *February*, no mutton or lamb shall be imported into this kingdom from the kingdom of *Ireland* or any foreign parts: (3) And all mutton and lamb imported from *Ireland*, or beyond the seas, or that shall be exposed to sale within this kingdom, shall be subject to the

like

like seizures, and the importers and sellers thereof respectively to the like penalties, as are provided and appointed in any former law against any importer or seller, or importation of any beef, pork or bacon, from the kingdom of *Ireland*, or any foreign parts; any thing in this or any former law or statute to the contrary notwithstanding.”

*Secl. 10.* “ And for the more effectual execution of this and the aforesaid act, (2) Be it further enacted by the authority aforesaid, That if any great cattle, sheep or swine shall be once or oftner seized in pursuance of this or the aforesaid act, and afterwards either by permission, connivance, negligence or otherwise shall be removed into and found alive in any parish or place within the kingdom of *England*, dominion of *Wales* or town of *Berwick upon Tweed*, other than such parish or place wherein they shall have been respectively seized, That then the said cattle, sheep and swine shall be liable to like seizure, and the seizer, and poor of the parish or place have like benefit and advantage, and the cattle, sheep and swine be forfeited, and the proof be incumbent upon the owner, as if such cattle had never before been seized.”

*Secl. 11.* “ And whereas divers persons, on purpose to discourage others from making seizure of *Irish* cattle, have intermixed some few *English* or other cattle in droves of *Irish* cattle, and so created many vexatious and chargeable suits against those that have seized *Irish* cattle in pursuance of the aforesaid act; (2) Be it further enacted by the authority aforesaid, That if any *English* or other cattle driven or intermixed with *Irish* cattle shall be seized together with them, such cattle so intermixed and seized shall be deemed *Irish* cattle, and shall be subject to like forfeiture, and be ordered and disposed of in all respects as if they were *Irish* cattle, and imported contrary to this and the aforesaid act.”

*Secl. 12.* “ Provided that nothing in this act shall be construed to extend to the forfeiture or seizing any cattle, that are or shall be in *England* before the said second day of *February*.”

By *Stat 9 Geo. 1. c. 22.* maliciously killing or wounding cattle is felony without clergy. See this act at large under *Black-Act*, page 347.

*Stat. 14 Geo. 2. c. 6.* [*A. D. 1741. intituled*] “ An act to render the laws more effectual for preventing the stealing and destroying of sheep, and other cattle.”

“ Whereas divers evil-disposed persons have of late, more generally and frequently than was ever known before, made it their practices secretly in the night-time to drive away and steal great numbers of sheep, and likewise secretly in the night-time to kill great numbers of sheep, and to strip off their skins, and then steal the carcasses of the sheep so killed, leaving their skins behind to prevent discoveries; and also in like manner to kill great numbers of sheep, and then cut open the sheep so killed, and take out and steal their inward fat, leaving their carcasses behind to prevent be-

ing discovered; by which wicked practices many of his majesty's good subjects have been very greatly injured in their properties, and put to very great charges in having their sheep and other cattle watched: And whereas the laws in being have not proved effectual to prevent the increase of the said wicked practices; Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person or persons shall, at any time from and after the first day of *May* in the year of our lord one thousand seven hundred and forty-one, feloniously drive away, or in any other manner feloniously steal one or more sheep or other cattle of any other person or persons whatsoever, or shall wilfully kill one or more sheep or other cattle of any other person or persons whatsoever, with a felonious intent to steal the whole carcase or carcasses, or any part or parts of the carcase or carcasses of any one or more sheep or other cattle that shall be so killed, or shall assist or aid any person or persons to commit any such offence or offences; that then the person or persons guilty of any such offence, being thereof convicted in due form of law, shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy."

Sheepstealing, or stealing any part of them, made felony, without benefit of clergy.

Reward for taking and convicting sheep-stealers.

*Sec. 2.* " And for the encouragement of such persons as shall vigorously endeavour to discover, apprehend and prosecute such offenders as aforesaid; Be it further enacted by the authority aforesaid, That from and after the first day of *May* one thousand seven hundred and forty-one, all and every person and persons, who shall apprehend and prosecute to conviction, any offender or offenders guilty of any of the offences herein before mentioned, shall have and receive, as a reward upon every such conviction, the sum of ten pounds, to be paid within one month after such respective conviction, by the sheriff or sheriffs of the county where such offence or offences shall be committed and done (without any deduction whatsoever) to the person or persons so apprehending and prosecuting such offender or offenders, he or they tendering a certificate to the sheriff or sheriffs, signed by the judge or judges, before whom any such offender shall be convicted, certifying such conviction, and where the offence was committed, and that such offender or offenders was or were apprehended and prosecuted by the person or persons claiming the said reward; which certificate the said judge or judges are hereby authorized and required to sign accordingly, before the end of the same sessions or assizes, at which such respective conviction shall happen to be; and in such certificate shall direct and appoint (in case more than one person shall claim a right to the said reward) what share and proportion thereof shall be paid to each claimant; and if it shall happen that any such sheriff or sheriffs shall die or be removed before the expiration of one month after such conviction, and demand made of the said reward (the same not being paid as aforesaid), that then the next succeeding sheriff or sheriffs shall pay the same within one month after demand, and certificate brought as aforesaid; and if default of payment of the said sum or sums of money shall happen to be made by any sheriff or sheriffs, such sheriff or sheriffs so making default shall forfeit to

Sheriff on default of payment.

the person or persons, to whom such money is due as aforesaid, double the sum or sums of money he or they ought to have paid, to be recovered by him or them, or his or their executors or administrators, in any of his majesty's courts of record at *Westminster*, by action of debt, bill, plaint or information, wherein but one imparlance, and no essoin, protection or wager of law shall be allowed, with treble costs of suit by him or them expended in the recovery of the same." ment, to forfeit double the sum. Treble costs.

*Sett.* 3. "And be it further enacted by the authority aforesaid, That all sheriffs, their executors and administrators, upon producing such respective certificates, and the receipts for the monies paid by them in pursuance of this act, shall be allowed, and are hereby empowered to deduct, upon their accounts, all monies, other than double the sum or sums of money and treble costs of suit, which they shall disburse as aforesaid; and that if upon account of any sheriff or sheriffs, there shall not be money sufficient in the hands of such sheriff or sheriffs, to reimburse him or them such monies paid by him or them by virtue of this act, that then the sheriff or sheriffs, having so paid the said monies, shall have the same repaid by the lord treasurer, or commissioners of his majesty's treasury for the time being, out of the revenue of the crown, upon certificate from the clerk of the pipe to that effect." Sheriffs how to be repaid.

**Stat.** 15 *Geo.* 2. c. 34. [ *A. D.* 1741. intituled ] "An act to explain an act made in the fourteenth year of the reign of his present majesty," intituled, *An act to render the laws more effectual for preventing the stealing and destroying of sheep and other cattle.*"

"Whereas by an act made in the fourteenth year of the reign of his present majesty, intituled, *An act to render the laws more effectual for preventing the stealing and destroying of sheep and other cattle*, it was enacted, That if any person or persons should, at any time from and after the first day of *May* in the year of our Lord one thousand seven hundred and forty-one, feloniously drive away, or in any other manner feloniously steal, one or more sheep or other cattle of any other person or persons whatsoever, or should wilfully kill one or more sheep or other cattle of any other person or persons whatsoever, with a felonious intent to steal the whole carcase or carcases, or any part or parts of the carcase or carcases of any one or more sheep or other cattle that should be so killed, or should assist or aid any person or persons to commit any such offence or offences, that then the person or persons guilty of any such offence, being thereof convicted in due form of law, should be adjudged guilty of felony, and should suffer death as in cases of felony without benefit of clergy: And whereas it is doubtful to what sorts of cattle besides sheep the said act was meant to extend, Be it therefore enacted and declared by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That the said act was meant and intended, and shall be construed, deemed and taken to extend to any bull, cow, ox, steer, bullock, heifer, calf and lamb, as well as sheep, and to no other cattle whatsoever." To what sorts of cattle the act shall extend.

By



By *Stat. 31 Geo. 2. c. 40.* Salesmen and others employed to sell cattle in *London*, or within the weekly bills of mortality, are not to buy and sell on their own account, on penalty of forfeiting double the value. *See this act at large under title Day.*

*Stat. 5 Geo. 3. c. 10. [A. D. 1765. Intituled]* “An act to permit the free importation of cattle from *Ireland*.”

Preamble,  
Act 32 Geo.  
2.

The free im-  
portation of  
cattle from  
*Ireland* al-  
lowed for the  
term of 7  
years;  
without pay-  
ment of du-  
ties.

“Whereas an act, passed in the thirty-second year of the reign of his late majesty king *George* the second, intituled, “An act to permit the free importation of cattle from *Ireland* for a limited time” is near expiring; Be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the end of this session of parliament, the free importation of all sorts of cattle into this kingdom from *Ireland* shall be and is hereby permitted, allowed and authorized, for and during the space of seven years, and from thence to the end of the then next session of parliament; and that all persons shall be and are hereby exempted, freed and discharged from the payment of all subsidies, customs, rates, duties, or other impositions, and also from all penalties, forfeitures, payments, and punishments, for or on account of importing or bringing cattle into this kingdom from *Ireland*; any act or acts of parliament to the contrary notwithstanding.

General issue.

*Secl. 2.* “And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced against any person or persons for any thing done in pursuance of this act, the defendant or defendants, in such action or suit, may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear so to have been done, the jury shall find for the defendant or defendants; and if the plaintiff shall be nonsuited, or discontinue his action after the defendant or defendants shall have appeared, or if judgment shall be given upon any verdict or demurrer against the plaintiff, the defendant or defendants shall and may recover treble costs; and have the like remedy for the same, as any defendant or defendants hath or have in other cases by law.

Treble costs.

By *Stat. 5 Geo. 3. c. 43.* Bestials may be freely imported from the *Isle of Man*.

**Certiorari.**

## Certiorari.

**CERTIORARI** is an original writ issuing out of Chancery or the King's Bench, directed in the king's name to the judges or officers of inferior courts, commanding them to return the record of a cause depending before them; to the end the party may have the more sure and speedy justice before him or such other justices as he shall assign to determine the same. *F. N. B.* 242.

The court of King's Bench has a superintendancy over all courts of an inferior criminal jurisdiction, and may by the plentitude of its power award a certiorari, to have any indictment removed and brought before itself; and where such certiorari is allowable, ought of right to award it at the instance of the king, because every indictment is the suit of the king, and he has a prerogative of suing in what court he pleases. 1 *Vent.* 63. 1 *Mod.* 4. 2 *Hawk. P. C.* 287.

But though the court is to grant it at the suit of the king, yet it has a discretionary power in granting or refusing it at the suit of the defendant, and agreeably hereto it is laid down as a general rule, That the court will never grant it for the removal of an indictment before justices of gaol-delivery, without some special cause; as where there is just reason to apprehend that the court below may be unreasonably prejudiced against the defendant; or where there is so much difficulty in the case, that the judge below desires that it may be determined in the King's Bench; or where the king himself gives special direction that the cause shall be removed; or where the prosecution appears to be for a cause not properly criminal. 2 *Hawk. P. C.* 287.

Neither will the court of King's Bench ordinarily, at the prayer of the defendant, grant a certiorari for the removal of an indictment of perjury, or forgery, or other heinous misdemeanor; for such crimes deserve all possible discountenance, and the certiorari might delay, if not wholly discourage their prosecution. 2 *Hawk. P. C.* 287.

Nor will the court of King's Bench grant it for a conviction of recusancy on a default at the sessions, because by the statute such convictions are to be removed into the Exchequer; and process on them is to go from thence. 2 *Hawk. P. C.* 287, 288.

A certiorari lies in all judicial proceedings, in which a writ of error does not lie; and it is a consequence of all inferior jurisdictions erected by act of parliament, to have their proceedings returnable in the King's Bench. *Ld. Raym.* 469, 580. And therefore a certiorari lies to justices of the peace, even in such cases which they are impowered by statute finally to hear and determine; and the superintendency of the court of King's Bench is not taken away without *express* words. 2 *Hawk.* 286.

It

It seems agreed, that a certiorari shall never be granted to remove an indictment after a conviction, unless for some special cause; as where the judge below is doubtful what judgment is proper to be given; for unless there be some such reason, the judge who tried the cause, shall not be prevented from giving judgment in it; for it cannot be intended but that he is best acquainted with the circumstances of it, and consequently best able to judge what fine or other punishment is proper for it. 2 Hawk. 288.

2 Stran.  
1227. East.  
18 Geo. 2.  
King v. Nicholls.

An indictment was removed into the King's Bench by certiorari, after conviction, and before judgment. Upon which a doubt arose, what the court could do, the certiorari being brought before judgment; and this court not being apprized of the circumstances of the offence, could not tell what judgment to give: And in *Carth. 6.* it is said they cannot give judgment. A rule therefore was made, to shew cause why the certiorari should not be quashed, so as to remit it back to the sessions; which was afterwards made absolute.

Certiorari to remove an indictment from the quarter-sessions not being issued till after confession of the assault below, a *procedendo* was granted. 2 Bur. Rep. 749. Hil. 32 Geo. 2. Rex v. Gwynne & al'.

Lord Mansfield being absent in the dutchy-court, the three other judges (on a defended motion) granted a *procedendo*, at the instance of the defendant, to the quarter-sessions of *Brecon*, upon an indictment for an assault removed up hither; because the *certiorari* had not issued till after the defendant had *confessed* the assault below; though the conviction was not after a trial, and though several of the justices were sworn to be near relations of Mr. Gwynne, one of the defendants; namely, his father, two brothers, and an uncle.

Certiorari lies to remove orders made upon the conventicle act, 22 Car. 2. c. 1. even after appeal, trial by a jury, verdict and judgment against the defendants, notwithstanding the 6th & 13th sections: for the certiorari does not go to try the merits, but to see

whether the limited jurisdiction have exceeded their bounds or not. 2 Bur. Rep. 1040. Trin. 33 & 34 Geo. 2. Rex v. Morely, Osborne, Reeve and Norris.

Mr. Knowler and Mr. Filmer shewed cause against *issuing* of a *certiorari* to remove several orders made by Mr. Moneypenny, a justice of peace in *Kent*, upon the *Conventicle-Act*, 22 Car. 2. c. 1. By which orders he had convicted a methodist preacher, and the master of the house wherein he preached, and several of the audience, in the respective penalties following. The preacher (*Moreley*) was convicted in 20*l.* The master of the house (*Osborne*) in 20*l.* and several of the persons present in 5*s.* a-piece. Two of the auditors (*Keeve* and *Norris*) had 10*l.* a-piece levied upon them, (by virtue of the third section of this act); the preacher himself not being to be found. The penalty had been levied upon *Osborne*, (the master of the house) as well as upon *Reeve* and *Norris*. They had all appealed (within the week) to the sessions: And Mr. Moneypenny had returned to the sessions, the monies levied, and certified the evidence, with the record of the conviction, agreeable to the directions of the 6th section; and the defendants had pleaded and been *tried by a jury* at the quarter-sessions; and there had been both verdict and judgment given against them.

Mr. Knowler and Mr. Filmer, on behalf of the prosecution, urged, that after all this had passed, a *writ of error* might lie; but not a *certiorari*, which

which will lie when there is *no other remedy*. And there is a clause in the 6th section, which expresses, "That no *other court* whatsoever shall intermeddle with any cause or causes of appeal upon this act; but they shall be finally determined in the quarter-sessions only." Which negative words must include all the courts of judicature in the kingdom, and this court in particular, as being most likely to meddle with matters of this kind. And the 13th section directs "that this act, and *all clauses* therein contained, shall be construed most largely and beneficially for the suppressing of conventicles, and for the justification and encouragement of all persons to be employed in the execution thereof; and that no record, warrant or mittimus to be made by virtue of this act, or any proceedings thereupon, shall be reversed, avoided or any way impeached, by reason of any default in forms." Therefore, to what purpose should a certiorari issue, when the court can neither intermeddle with the fact or form? The penalties are (by the second section) to be distributed into three parts;  $\frac{1}{3}$  to the king,  $\frac{1}{3}$  to the poor,  $\frac{1}{3}$  to the informer; and those penalties have been so distributed; and this court can not order restitution. As to the penalties under 10 s. the act gives no appeal: If the justices have done any wrong in the manner of these, 'tis a matter *coram non judice*. Mr. Knowler and Mr. Filmer had affidavits of the facts which they alledged. Lord Mansfield, asked them whether the negative words in the 6th section would not conclude strongly against a writ of error. Mr. Knowler and Mr. Filmer answered, That as to fact, they might; but, perhaps, not as to law. They cited a little printed book, said to be written by lord chief justice Saunders, (a comment on this conventicle-act) folio 69. sect. 6. and sect. 13. which shewed him to be of opinion "That no certiorari would lie upon it." Mr Justice Dennison observed, that there have been many determinations to the contrary since.

Mr. Norton, Mr. Stow, and Mr. Leigh, who were for the certiorari, insisted that the general jurisdiction of this court is not taken away by mere negative words in an act of parliament: this court shall never be ousted of its jurisdiction without special words. Dr. Foster's case, 11 Co. 64. b. 1 Ro. Rep. 92, 94. S. C. 1 Ventr. 66. Smith's case. 1 Mod. 45. S. C. Besides, these words, "that no other court whatsoever shall intermeddle with any cause or causes of appeal; but that they shall be finally determined in the quarter-sessions only" mean no more than that the facts shall not be re-examined; but the legality may; or a want of jurisdiction may be taken advantage of. The case may be such as that the justices have no jurisdiction of the matter. And where a statute does not expressly and totidem verbis take away a certiorari, and direct, "that, no certiorari shall issue," the court will grant one. And Peat's case, in 6 Mod. 228. proves, "that a certiorari does lie upon this very act." The court there say, "that the justices of peace being judges of the matter, if they wrong you, you have your remedy by certiorari, or appeal to the sessions." And it appears in that case (at the end of it) that a certiorari had then actually issued. As to five of these convictions, which were against persons present at this assembly, and under 10 s. (namely, only 5 s. a-piece,) no ap-

peal is given: And consequently there can be no doubt but that a *certiorari* does lie, as to them.

Mr. Norton, being asked "*What* was the objection that he had to these "*convictions,*" answered, that it was *not alledged* " That the defendants "*were subjects of this realm:* which is an essential requisite.

The court were unanimously of opinion, that a *certiorari* ought to issue. A *certiorari* does not go to try the *merit* of the question; but to see whether the *limited jurisdiction* have *exceeded their bounds.* The *jurisdiction* of this court is *not taken away,* unless there be *express words* to take it away: This is a point settled. Therefore a *certiorari* ought to issue: And after a return shall be made to it, you will be at liberty, and it will be open to you to move to supersede it, if there should appear reason for the court's so doing. Rule made absolute for a *certiorari.*

Stat. 21 Jac. 1. c. 8. [A. D. 1623.] Made, among other purposes, " To prevent the abuses in procuring writs of *certiorari* for the removing of indictments found before justices of the peace in their general sessions."

" Sect. 6. " And whereas divers bills of indictments of riot, forcible entry, or of assault and battery, being found before the justices of peace at their quarter-sessions of the peace, or otherwise, are oftentimes removed from the counties where such indictments are found, by writs of *certiorari* unto them directed out of the said courts, by, or by the means of the persons so indicted, who well know that few or no persons grieved by such their outrages and misdemeanors whereof they stand so indicted, will undergo the travel or charge of prosecution of such indictment so removed, by bringing the parties so indicted to trial; by means whereof, such offenders for the most part escape unprosecuted or unpunished, and the king loseth the fines which ought, and should have been imposed upon them, if such indictments had been prosecuted, and not removed:

*Certioraries* shall not be allowed, unless the indicted will become bound to pay costs.

Farther provisions relating to *Certioraries,*

13 & 14 Ca.

2. c. 6. f. 16.

22 Car. 2. c.

12. f. 4.

5 & 6 W. & M.

c. 11. 8 & 9

W. 3. c. 53.

13 Geo. 2.

c. 12.

Sect. 7. " Be it therefore enacted, That all such writs of *certiorari* shall, from and after the end of this present session of parliament, be delivered at some quarter-sessions of the peace in open court: (2) And that the parties indicted shall, before the allowance of such *certioraries,* become bound unto such person or persons which shall prosecute such bills of indictment against them, in the sum of ten pounds, with such sufficient sureties as the justices of peace at their quarter-sessions of the peace shall think fit, with condition to pay unto the said prosecutors of such bills of indictment, within one month after the conviction of such parties indicted, such reasonable costs and damages, as the said justices of peace of such counties where such bills of indictment shall be found, in the said sessions of the peace shall assess or allow: (3) And that in default thereof, it shall be lawful for the said justices to proceed to trial of such indictments; any such writs of *certiorari* to remove the same indictments notwithstanding."

**Stat. 5 Will. & Ma. c. 11.** [*A. D. 1694. intituled*] "An act to prevent delays of proceedings at the quarter-sessions of the peace."

"Whereas it is experienced that, notwithstanding the statutes made in the one and twentieth year of the reign of king *James* the first, and in the thirteenth and fourteenth and two and twentieth years of king *Charles* the second, concerning the granting of writs of *certiorari*, to remove indictments of riots, forcible entry, assault and battery, and other presentments and indictments out of the courts of the general or quarter-sessions of the peace, in the counties or places wherein such indictments have been found, and proceedings thereupon recorded, into their majesties court of *King's Bench*, divers turbulent, contentious, lewd and evil disposed persons, fearing to be deservedly punished, where they and their offences are well known, have not only obtained writs of *certiorari* for removing such indictments found against them as aforesaid, but also indictments for sundry other trespasses, frauds, nuisances, contempts and misdemeanors, after issue joined, and the prosecutors attending with their council and witnesses to try the same before the said justices of the peace in their said sessions, to the great discouragement of the prosecutors, and of such constables and other officers, as according to their duty present persons for those and such like trespasses, offences, and misdemeanors: For remedy whereof, and that such offenders may be brought to condign punishment;"

**Sett. 2.** "Be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in term time no writ of *certiorari* whatsoever, at the prosecution of any party indicted, be hereafter granted, awarded, or directed out of the said court of *King's Bench*, to remove any such indictment or presentment of trespass or misdemeanor, before trial had, from before the said justices in the said courts of general or quarter-sessions of the peace, unless such *certiorari* shall be granted or awarded upon motion of council, and by rule of court made for the granting thereof, before the judge or judges of the said court of *King's Bench* sitting in open court, and that all the parties indicted, prosecuting such *certiorari*, before the allowance thereof, shall find two sufficient manucaptors, who shall enter into a recognizance before one or more justices of the peace of the county or place, in the sum of twenty pounds, with condition at the return of such writ to appear and plead to the said indictment or presentment in the said court of *King's Bench*, and at his and their own costs and charges to cause and procure the issue that shall be joined upon the said indictment or presentment, or any plea relating thereunto, to be tried at the next assizes to be held for the county wherein the said indictment or presentment was found, after such *certiorari* shall be returnable, if not in the cities of *London*, *Westminster*, or county of *Middlesex*; and if in the said cities or county, then to cause or procure it to be tried the next term after, wherein such *certiorari* shall be granted, or at the sitting after the said term, if the court of *King's Bench* shall not appoint any other time for the trial thereof; and if

21 Jac. 1. c. 3.

13 & 14 Car.

2 c. 6. f. 16

22 Car. 2. c.

12. f. 4

*Certiorari* in

term time

grantable only

upon motion.

Recognizance

to be given for

trying the issue

next assizes,

2 Salk. 564.

except in

London and

Westminster.

Certiorari  
granted with-  
out recogni-  
zance void.

any other time shall be appointed by the court, then at such other time, and to give due notice of such trial to the prosecutor, or his clerk in court; and that the said recognizance and recognizances, taken as aforesaid, shall be certified into the said court of *King's Bench*, with the said *certiorari* and indictment to be there filed, and the name of the prosecutor (if he be the party grieved or injured) or some publick officer, to be indorsed on the back of the said indictment, and if the person prosecuting such *certiorari*, being the defendant, shall not before allowance thereof, procure such manucaptors to be bound in a recognizance as aforesaid, the justices of the peace may and shall proceed to trial of the said indictment at the said sessions, notwithstanding such writ of *certiorari* so delivered."

Officers pro-  
secuting shall  
have double  
costs.

*Secl. 3.* "And be it further enacted, That if the defendant prosecuting such writ of *certiorari* be convicted of the offence, for which he was indicted, that then the said court of *King's Bench* shall give reasonable costs to the prosecutor, if he be the party grieved or injured, or be a justice of the peace, mayor, bailiff, constable, headborough, tythingman, churchwarden, or overseer, of the poor, or any other civil officer, who shall prosecute upon the account of any fact committed or done, that concerned him or them, as officer or officers, to prosecute or present, which costs shall be taxed according to the course of the said court, and that the prosecutor, for the recovery of such costs, shall within ten days after demand made of the defendant, and refusal of payment on oath, have an attachment granted against the defendant by the said court for such his contempt; and that the said recognizance shall not be discharged till the costs so taxed shall be paid."

Certiorari how  
grantable in  
vacation.

*Secl. 4.* "Provided always, and be it enacted by the authority aforesaid, That in any of the vacations, writs of *certiorari* may be granted by any of the justices of their majesties court of *King's Bench*, whose names shall be indorsed on the said writ, and also the name of such person at whose instance the same is granted, and that the party or parties indicted, prosecuting such *certiorari*, shall before the allowance of such writ or writs of *certiorari*, find such sureties in such sum, and with such conditions, as are before mentioned and specified in this present act."

Certiorari in  
Chester, &c.  
how granted.

*Secl. 5.* "And be it further enacted by the authority aforesaid, That upon every *certiorari* granted or awarded within the counties palatine of *Chester*, *Lancaster*, or *Durham*, to remove indictments or presentments for any of the matters aforementioned, all the parties indicted, prosecuting such *certiorari*, shall find such sureties to be bound in such sums, and with such respective conditions, and at his or their own costs and charges shall cause and procure the issue joined upon the said indictments or presentments, to be tried at the next assizes or general gaol-delivery to be held for the said respective counties, and shall give like notice to the prosecutor; and if convicted shall be liable to like costs, to be taxed as is by this act provided for in cases where the same are granted, or awarded out of the court of *King's Bench* at *Westminster*."

Certiorari  
upon repairing  
highways,  
&c. See Stat.

*Secl. 6.* "Provided always, and be it enacted by the authority aforesaid, That if any indictment or presentment be against any person or persons, for not repairing of any highways, causeways, pavements, or bridges, and  
the

the right or title to repair the same may come in question, upon such suggestion and affidavit made of the truth thereof, a *certiorari* may be granted to remove the same into the court of *King's Bench*; any law or statute to the contrary in any wise notwithstanding. Provided nevertheless, That the party or parties prosecuting such *certiorari* shall find two manucaptors to be bound in a recognizance and with condition as aforesaid." 7 Geo. 3. c. 42. sect. 53.

*Seft.* 7. "Provided always, and be it enacted by the authority aforesaid, That this act shall continue and be in force for three years, and from thence to the end of the next session of parliament and no longer. *Made perpetual* by 8 & 9 *W.* 3. *cap.* 33. This act to continue for 3 years.

**Stat.** 8 & 9 *Will.* 3. *c.* 33. [*A. D.* 1697. intituled] "An act to make perpetual and more effectual an act, intituled, *An act to prevent delays at the quarter-sessions of the peace.*

"Whereas an act made in the fifth and sixth years of the reign of king *William* and the late queen *Mary*, intituled, *An act to prevent delays of proceedings at the quarter-sessions of the peace*, which was to continue and be in force for three years, and from thence to the end of the next session of parliament, by experience hath been found useful and beneficial; therefore for continuing the same, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That the said act shall be and is hereby continued, and shall be in force and be made perpetual." Act 5 & 6 *W.* & *M.* c. 11. made perpetual.

*Seft.* 2. "And for making the Purpose and design of the said act more effectual, be it enacted by the authority aforesaid, That from and after the one and twentieth day of *April*, which shall be in the year of our Lord one thousand six hundred ninety-seven, the party or parties prosecuting any *certiorari*, to remove any indictment or presentment from the quarter or general sessions of the peace, may find two sufficient manucaptors, who shall enter into a recognizance before any one of his majesty's justices of the court of king's bench, in the same sum, and under the same condition as is required by the said act, whereof mention shall be made on the back of such writ, under the hand of the justice taking the same, which shall be as effectual and available to all intents and purposes, to stay and supersede any further proceedings upon any indictment or presentment, for the removal of which the said writ of *certiorari* shall be granted, as if the recognizance had been taken before any one of the justices of the peace of the county or place where such indictment was found, or presentment made; and also it shall be added to the condition of every recognizance taken by virtue of this and the said act, that the party or parties prosecuting such writ of *certiorari*, shall appear from day to day in the said court of king's bench, and not depart until he or they shall be discharged by the said court. Party prosecuting any *certiorari* to remove an indictment may find two manucaptors to enter into a recognizance, &c.  
  
Party to appear daily in the King's bench court until discharged.

In the construction of these statutes, says Mr. serjeant *Hawkins*, the following points seem most remarkable :

*First,*



*First*, That notwithstanding by the express words, justices of peace may proceed to trial of the indictments, notwithstanding the *certiorari*, if a proper recognizance be not given; yet they will be in contempt to the court that awarded the *certiorari*, if they make no return to it; for all writs must be obeyed, unless good cause be shewn to the contrary; and the proper way of shewing it is to return it. 2 Hawk. 292.

*Secondly*, That it appears from the manifest purport of these statutes, that they extend only to *certioraries* procured by persons *indicted*; from whence it follows, that those which are procured by the prosecutor of an indictment remain as they were at common law. 2 Hawk. P. C. 292.

*Thirdly*, That these statutes, being in the affirmative as to the taking of recognizances, do not take away the power which the justices of the king's bench have by the common law of taking recognizances upon their granting *certioraries*, from whence it follows, that if any such justice, granting a *certiorari*, shall take a recognizance variant from that prescribed by the act, either as to the sum or condition, &c. such recognizance will have the same force as it would have had, if these statutes had not been made; but it is said, that the *certiorari*, if procured by the defendant, will not in such case be a *superfedeas* to the proceedings below, as it would have been at the common law; for the statute seems to be express, that the sessions may proceed notwithstanding any *certiorari* procured by a defendant whereon such recognizance is not given, as is expressly prescribed. 2 Hawk. P. C. 292.

*Fourthly*, That if the persons offering to be sureties, appear to be worth 20*l.* the justices cannot refuse them. 2 Hawk. P. C. 292.

*Fifthly*, That if divers be indicted in the same indictment, and some of them find sureties, and others not, the indictment ought to be removed as to those who find sureties, because they shall not be prejudiced by the default of the others: And, as some say, it shall be removed as to the others also. 2 Hawk. P. C. 292.

*Sixthly*, That the master of the crown-office, in taxing the costs, ought only to consider those which are subsequent to the *certiorari*. 2 Hawk. P. C. 292.

*Seventhly*, That the prosecutor, by accepting the costs so taxed, is not restrained from aggravating the fine to be set on the defendant, because he has a right to such costs by the express words of the statute; and therefore the defendant can claim no indulgence from having paid them: But in other cases, after a prosecutor has accepted costs from a defendant, he cannot by the rules of the court aggravate his fine, because in such cases, having no right to demand costs, if he take them at all, he must take them by way of satisfaction of the wrong, after which it is unreasonable in him to harass the defendant. And this I take to be a common practice, though in *Salkeld's* reports (1 Salk. 55. pl. 5.) there seems to be a note to the contrary. 2 Hawk. P. C. 292.

*Eighthly*, That notwithstanding the condition of the recognizance seems to be express, that the defendant shall procure a trial at the next assize, &c. yet

yet it shall not be forfeited, unless the prosecutor of the indictment give rules according to the course of the court. 2 *Hawk. P. C.* 293.

*Ninthly*, That after such recognizance is forfeited, by the defendant's not procuring a trial according to the purport of the condition, the court will not hear any motion to quash the indictment, or *certiorari*. 2 *Hawk. P. C.* 293.

**Stat. 5 Geo. 2. c. 19.** [*A. D. 1732. intituled*] "An act to oblige the justices of the peace at their general or quarter sessions to determine appeals made to them according to the merits of the case, notwithstanding defects of form in the original proceedings; and to oblige persons suing forth writs of *certiorari* to remove orders made on such appeals into his majesty's court of King's Bench, to give security to prosecute the same with effect."

"Whereas in many cases, where his majesty's justices of the peace by law are impowered to give or make judgments or orders, great expences have been occasioned by reason that such judgments or orders have, on appeals to the justices of the peace at their respective general or quarter sessions, been quashed or set aside upon exceptions or objections to the form or forms of the proceedings, without hearing or examining the truth and merits of the matter in question between the parties concerned: Therefore to prevent the same for the future, may it please your most excellent majesty, that it may be enacted, and Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That after the twenty-fourth day of *June* one thousand seven hundred and thirty-two, upon all appeals to be made to the justices of the peace at their respective general or quarter sessions to be holden for any county, riding, city, liberty or precinct, within that part of *Great Britain* called *England*, against judgments or orders given or made by any justices of the peace as aforesaid, such justices, so assembled at any general or quarter sessions, shall, and they are hereby required from time to time, within their respective jurisdictions, upon all and every such appeals so made to them, to cause any defect or defects of form, that shall be found in any such original judgment or orders, to be rectified and amended without any cost or charge to the parties concerned, and after such amendment made shall proceed to hear, examine and consider the truth and merits of all matters concerning such original judgments or orders; and likewise to examine all witnesses upon oath, and hear all other proofs relating thereto, and to make such determinations thereupon, as by law they should or ought to have done, in case there had not been such defect or want of form in the original proceeding; any law, usage or custom to the contrary notwithstanding."

After 24 June 1732, justices may rectify defects of form on appeals,

and may proceed to determine them.

**Stat. 2.** "And whereas divers writs of *certiorari* have been procured to remove such judgments or orders into his majesty's court of King's Bench at *Westminster*, in hopes thereby to discourage and weary out the parties concerned

No certiorari to be allowed to remove justices orders, without a recognizance of 50 l. to prosecute to effect.

On refusal of recognizance justices to proceed.

Recognizances to be certified into the King's Bench.

Attachment for contempt.

concerned in such judgments or orders by great delays and expences: Be it therefore enacted by the authority aforesaid, That no *certiorari* shall be allowed to remove any such judgment or order, unless the party or parties prosecuting such *certiorari*, before the allowance thereof, shall enter into a recognizance, with sufficient sureties, before one or more justices of the peace of the county or place, or before the justice at their general quarter-sessions, or general sessions, where such judgment or order shall have been given or made, or before any one of his majesty's justices of the said court of King's Bench, in the sum of fifty pounds, with condition to prosecute the same at his or their own costs and charges with effect, without any wilful or affected delay, and to pay the party or parties, in whose favour and for whose benefit such judgment or order was given or made, within one month after the said judgment or order shall be confirmed, their full costs and charges, to be taxed according to the course of the court, where such judgments or orders shall be confirmed; and in case the party or parties prosecuting such *certiorari*, shall not enter into such recognizance, or shall not perform the conditions aforesaid, it shall and may be lawful for the said justices to proceed, and make such further order or orders for the benefit of the party or parties, for whom such judgment shall be given, in such manner as if no *certiorari* had been granted."

*Sett. 3.* " And it is hereby further enacted by the authority aforesaid, that the recognizance and recognizances, to be taken as aforesaid, shall be certified into the court of King's Bench at *Westminster*, and there filed with the *certiorari* and order, or judgment removed thereby; and if the said order or judgment shall be confirmed by the said court, the persons intitled to such costs, for the recovery thereof, within ten days after the demand made, of the person or persons who ought to pay the said costs, upon oath made of the making such demand and refusal of payment thereof, shall have an attachment granted against him or them by the said court for such contempt; and the said recognizance so given, upon the allowing of such *certiorari*, shall not be discharged until the costs shall be paid, and the order so confirmed shall be complied with and obeyed."

*Stat. 13 Geo. 2. c. 18. [A. D. 1740.] made, among other purposes,* " for limiting the time for suing forth writs of *certiorari* upon proceedings before justices of the peace."

*Sett. 5.* " And for the better preventing vexatious delays and expence, occasioned by the suing forth writs of *certiorari*, for the removal of convictions, judgments, orders and other proceedings before justices of the peace; Be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of *June*, which shall be in the year of our Lord one thousand seven hundred and forty, no writ of *certiorari* shall be granted, issued forth, or allowed, to remove any conviction, judgment, order or other proceedings had or made by or before any justice or justices of the peace of any county, city, borough, town corporate or liberty, or the respective general or quarter sessions thereof, unless such *certiorari* be moved

Writ of certiorari how to be applied for.

or applied for within six kalendar months next after such conviction, judgment, order or other proceedings shall be so had or made, and unless it be duly proved upon oath, that the said party or parties suing forth the same, hath or have given six days notice thereof in writing to the justice or justices, or to two of them, (if so many there be) by and before whom such conviction, judgment, order or other proceeding shall be so had or made, to the end that such justice or justices, or the parties therein concerned, may shew cause, if he or they shall so think fit, against the issuing or granting such *certiorari*."

Mr. Clayton had moved (on the 19th instant) that the defendant might be at liberty (without paying any costs) to pay into court 40 s. being the penalty for his exercising the trade of a grocer, for the space of one month, contrary to 5 Eliz. c. 4. whereof he had been convicted upon an indictment found at the last Cumberland assizes; (which proceedings the defendant had removed hither by *certiorari*;) and that therefore the recognizance might be discharged: And he founded his motion upon the authority of *Rex v. French, Pasch. 24 G. 2. B. R.* *Rex v. Fisher, Tr. 24 G. 2. B. R.* (both on the motion of Mr. Ford;) in which cases this was done; because by 5 and 6 W. & M. c. 11. s. 3. no costs are payable; but upon indictments brought by the party aggrieved, or upon prosecutions by justices, &c. or other civil officers prosecuting as such. And so it was also, in a former case of *Rex v. Mary Incedon, M. 20 G. 2. B. R.* A rule was made to shew cause. And now, Mr. Norton not objecting to this motion, (being satisfied with the cases cited) the said rule was made absolute."

*Certiorari* on 5 & 6 Will. & M. c. 11. s. 3. (See page 579) no costs are payable, unless the indictment be brought by the party aggrieved, or by justices, mayors, &c. or other civil officers prosecuting as being such. 1 Bur. Rep. 431. Mich.

31 Geo. 2. *Rex v. Strong*;

A rule was made that no *certiorari* should be granted to remove orders of justices, from which the law has given an appeal to the sessions, before the matter be determined on the appeal, because it hinders the privilege of applying; and that if any order be removed before appeal, it should be sent down again: But if the time of appeal be expired, that case is not within the rule, per Holt Ch. J. But afterwards in *Mich. 4 Ann. B. R.* in the case of the inhabitants of *Shellington*, it was held, that advantage must be taken of this rule upon the motion to file the order, for that after it is filed, it is too late.

Orders of justices not to be removed before the time of appeal expired. 1 Salk. 147. Pas. 1 Ann. B. R.

Appeal from a poor's rate, and the sessions ordered the churchwardens to produce the books at an adjourned day, before which a *certiorari* was brought to remove that order, and held to lie though the appeal is depending, else the order must be obeyed before the validity of it can be determined. It was also held, that an appointment of overseers may be removed before an appeal to the sessions; for the rule laid down in *Salk. 147.* extends only to the case where there is a limited time for appealing, as to the next quarter-sessions; but the statute 43 Eliz. cap. 2. is not so restrained; and consequently it can never be said, that the time for appealing is out. And if the appeal from an appointment is lodged, there can be no *certiorari*, till the sessions had made a determination, and a *certiorari* brought pending such appeal shall be suppressed.

*Certiorari* to remove an order before appeal, where the time for appealing is not limited; 2 Stra. 991. Mich. 8 Geo. 2. Case of the borough of Warwick.

How far a  
certiorari is a  
superfedeas to  
the court  
below.

It is clearly settled, that after a *certiorari* is allowed by the court below, all subsequent proceedings on the record are erroneous. Also before 21 Jac. 1. which requires that all *certiorari's* for indictments, forcible entries, at sessions, shall be delivered in court, the delivery of such *certiorari* to any one justice of the peace of the same place, made all subsequent proceedings erroneous; and if any process had been before awarded on the indictment, the justice to whom the *certiorari* was delivered, ought immediately to have awarded a *superfedeas* to the sheriff, in order to have stopped the execution of it; and it seems that the delivery of such a *superfedeas* to the sheriff before he has begun to put a process in execution, makes his subsequent execution of it wholly void, because it is but a ministerial act; but if it be not delivered till after the execution is begun, he may afterwards go through with it, by virtue of a writ of *venditioni exponas*. 2 Hawk. P. C. 293, 294.

It is said that the bare delivery of a *certiorari* makes all subsequent proceedings on the record, whether before or after the return of the *certiorari*, erroneous, by force of the words *coram nobis terminari volumus & non alibi*; in which respect a *certiorari* is of greater force than a writ of error; for that becomes of no effect if the record be not certified in a reasonable time; also it hath been held that the very issuing of a *certiorari* is of itself a *superfedeas*, though it be never delivered; in the same manner as an appearance in the court above; and a *superfedeas* purchased there, though not delivered to the sheriff till after the *quinto exaetus*, will avoid an outlawry pronounced after; but it seems the better opinion, that if a *certiorari* be delivered before issue is joined, or at least before the return of it is expired, it is of no effect; however it is of no force at this day, as to indictments at sessions without a proper recognizance, pursuant to the said acts of parliament. 2 Hawk. P. C. 293, 294.

A *certiorari* for the removal of a recognizance for the good behaviour, or for an appearance at the sessions, will not supercede its obligation, because it would be highly inconvenient that the party, against whom there may be very just matter of complaint, should be let loose upon the bare bringing a writ. 2 Hawk. P. C. 294.

The return of a *certiorari* ought to be under the seal of the inferior court, or of the justice or justices to whom it is directed, and if such court have no proper seal, it may be under any other seal. Also it must be made by the person to whom the *certiorari* is directed, to the justices of peace of such a place, and the clerk of the peace only return it, or to the constable, or to the recorder of B. and the deputy constable or deputy recorder, return it, (without shewing in the return, that the principal had power to make a deputy) or to the steward of St. Paul's, and the steward of the church of St. Peter and St. Paul return it, nothing is removed. 2 Hawk. P. C. 294.

But if it be directed to the justice of Chester, it may be returned by A. B. Chief justice, for the same officer is known to be meant in the writ and return, and his description in both is in substance the same. 2 Hawk. P. C. 294.

A recognizance taken by a justice of peace, ought to be certified by such justice only, till it be made a record of the sessions, after which it shall be certified in the same manner as the other records of the sessions. 2 Hawk. P. C. 295.

The return to a *certiorari*, directed to justices of the peace, for the removal of an indictment, ought to have the clause, *as also to hear and determine divers felonies, &c.* in the description of the justices who make the return, where such clause is necessary in the caption of an indictment. 2 Hawk. P. C. 295.

The person to whom a *certiorari* is directed, may make what return to it he pleases, and the court will not stop the filing of it, on affidavit of its falsity, except only where the publick good requires it; as in the case of the commissioners of sewers, or for some other especial reason. 2 Hawk. P. C. 295.

Whatsoever is put into the return of a *certiorari*, by way of explanation or otherwise, besides what is ordered to be returned, is put in without warrant, and not to be regarded. 2 Hawk. 295.

Generally the record itself or the tenor of it, or the tenor of the tenor, is to be certified in the return to a *certiorari* according as the writ requires; for if, on a *certiorari* to return an order of justices of the peace, the tenor of it be only certified, the return is nought, but the return of the tenor of an indictment from *London* is good, by the city charter; also it is said to be sufficient to certify the tenor only in all cases where the purport of the *certiorari* is not to proceed on the record removed, but only to try the issue of *nul tiel record*. However it seems clear, that if the court, which awards a *certiorari*, have no jurisdiction to proceed on the record ordered to be removed, as where the court of *Common Pleas* awarded a *certiorari* for an indictment, the tenor only shall be removed, lest there should be a failure of justice. 2 Hawk. P. C. 295.

## **Cheat.**

**T**HOSE cheats which are punishable by the common law, may in general be described to be deceitful practices, in defrauding or endeavouring to defraud another of his own right by means of some artful device, contrary to the plain rules of common honesty; as by playing with false dice; or by causing an illiterate person to execute a deed to his prejudice by reading it over to him in words different from those in which it was written, or by persuading a woman to execute writings to another, as her trustee upon an intended marriage, which in truth contained on such thing, but only a warrant of attorney to confess a judgment, &c. or by suppressing a will, or by levying a fine in another's name, or suing out an execution upon a judgment for him, or acknowledging an action in his

name without his privity, and against his will, in which cases, by some good opinions, the record may be vacated, 1 *Hawk. P. C.* 187.

It seemeth to be the better opinion, That the deceitful receiving of money from one man to another's use, upon a false pretence of having a message and order to that purpose, is not punishable by a criminal prosecution, because it is accompanied with no manner of artful contrivance, but wholly depends on a bare naked lie; and it is said to be needless to provide severe laws for such mischiefs, against which common prudence and caution may be a sufficient security. 1 *Hawk. P. C.* 188.

Some of the above mentioned offences are punishable, not only with fine and imprisonment, but also with farther infamous punishment, (as cheating with false dice, especially if the offender be a common gamester); others are punishable with fine and imprisonment only, by the discretion of the judges, which is regulated by the circumstances of each particular case. 1 *Hawk. P. C.* 188.

Changing corn  
and giving bad  
instead of it,  
held indictable. 1 *Sess.*  
*Ca.* 217. *Trin.*  
16 *Geo.* 2.  
*Rex v. Wood.*  
*Latch* 202.  
*Trin.* 3 *Car.* 1.  
*Serlested's*  
case.

Indictment against the defendant a miller, for changing corn delivered to him to be ground, and giving bad corn instead of it. It was moved to quash it, because only a private cheat, and not of publick nature. It was answered, that being a cheat in the way of trade, it concerned the publick, and therefore was indictable. *The King against Marsh*, 2 *Keb.* 584. *Mich.* 21 *Car.* But the court unanimously agreed not to quash the indictment.

A person falsely pretending that he had power to discharge soldiers, took money of a soldier to discharge him, and being indicted for the same, the court held the indictment to be good.

**Stat.** 33 *Hen.* 8. c. 1. [*A. D.* 1741. *Intituled.*] “A bill against them that counterfeit letters or privy tokens, to receive money or goods in other mens names.”

“Forasmuch as many light and evil disposed persons, not minding to get their livings by truth, according to the laws of this realm, but compassing and devising daily how they may unlawfully obtain and get into their hands and possession goods, cattle, and jewels of other persons, for the maintenance of their unthrifty living, and also knowing that if they come to any of the same goods, cattels, and jewels by stealth, that then they, being thereof lawfully convicted according to the laws of the realm, shall die therefore; have now of late falsely and deceitfully contrived, devised, and imagined privy tokens, and counterfeit letters in other mens names, unto divers persons their special friends and acquaintances, for the obtaining of money, goods, cattels, and jewels of the same persons, their friends, and acquaintances, by colour whereof the said light and evil-disposed persons have deceitfully and unlawfully obtained and gotten great substance of money, goods, cattels, and jewels into their hands and possessions contrary to right and conscience:

3 *Bulstr.* 149.

*Sess.* 2. “For reformation whereof, Be it ordained and enacted by the authority of this present parliament, That if any person or persons, of what

what estate or degree soever he or they be, at any time after the first day of *April* next coming, falsely and deceitfully obtain, or get into his or their hands or possessions, any money, goods, cattels, jewels, or other things of any other person or persons, by colour and means of any such false token or counterfeit letter made in any other man's name, as is aforesaid, that then every such person and persons so offending, and being thereof lawfully convicted by witnesses taken before the lord chancellor of *England* for the time being, or by examination of witnesses, or confession taken in the star-chamber at *Westminster* before the king's most honourable council, or before the justices of assize in their circuits for the time being, or before the justices of peace within any part of the king's dominions in their general sessions, or by action in any of the king's courts of record, (2) shall have and suffer such correction and punishment, by imprisonment of his body, setting upon the pillory, or otherwise by any corporal pain (except pains of death) as shall be unto him or them limited, adjudged, or appointed by the person or persons before whom he shall be so convicted of the said offences, or of any of them.

*Seet. 3.* " And be it further enacted by the authority aforesaid, That as well the justices of assize for the time being, as also two justices of peace in every county, whereof the one to be of the *quorum*, shall have full power and authority to call and convent, by process or otherwise, to the said assizes or general sessions, any person or persons being suspected of any of the offences aforesaid, and to commit him or them to ward, or let him or them to bail till the next assizes or general sessions, there to be examined, and further to be ordered by their discretions, as is abovesaid.

*Seet. 4.* " Provided always, and be it further enacted by authority aforesaid, That justices of the peace within every city, borough, town, and franchise within this realm or other the king's dominions, shall have like jurisdiction, power and authority, at their general sessions and otherwise, to do and execute all and every thing and things in all points, as other justices of the assizes in their circuits, or justices of the peace in the counties, by virtue of this act, be limited and appointed to do and execute for the punishment and correction of like offenders, as by this aforesaid act is specified and declared: (2) Saving to the party grieved by such deceit, such remedy by way of action or otherwise, of and for the same money, goods, cattels, jewels, or other things so obtained, as he might have had if this act had never been had ne made; any thing in the same contained to the contrary in any wise notwithstanding.

*Seet. 5.* " Provided always, and be it further enacted by the authority aforesaid, That the king's highness council of his town of *Calice*, or three of them for the time being, shall have such and like authority for the examination, bailment, and punishment of such offender or offenders, and for such offences hereafter to be committed and done within the town and marches of *Calice*, and counties of *Guisnes*, as the aforesaid justices of assize or justices of peace have by force of this act within their jurisdictions and authorities."

Sir



3 Inst. 123.

Cro Car.

564.

Sir *Edward Coke* is of opinion, says Mr. serjeant *Hawkins*, that the offender cannot be fined in a prosecution upon this statute, because some corporal punishment shall be inflicted, and no other is mentioned; however, there is a precedent in *Croke's* reports, by which it appears, that one convicted on such a prosecution hath been adjudged not only to stand on the pillory, but also to pay a fine of five hundred pounds, and to be bound with good sureties to his behaviour.

Indictment for attempting to defraud a tradesman of his goods, not said with false tokens, and judgment arrested.

2 Sess. Ca. 27.

East. 3 G. 2.

Rex v. Mar-

tha Brian.

The defendant was indicted for attempting to defraud one *Langley*, a mercer in *Ludgate-street*, of some pieces of velvet and silks, pretending she was servant to a lady his customer who wanted the goods, and that she was to carry them back with her. This appeared on the evidence at *Guildhall* before my lord chief justice *Raymond*, and the prosecutor suspecting her refused to let her have the goods she asked for, and which were mentioned in a letter she said was sent by the lady; he carried her before a justice of the peace; she was found guilty on that indictment; and now moved in arrest of judgment, that by the record it does not appear she made use of *any false tokens*, and then it is not an indictable offence; *The King* against *Jones*, *Salk.* 379. *6 Mod.* 105. And as it appeared that she did not get any of the prosecutor's goods into her possession, she cannot be charged by force of the statute 33 *H. 8. c. 7.* and that has been resolved, *Vent.* 304. *5 Mod.* 18. and therefore, as no damage has accrued by this attempt of the defendant, she ought to be freed of the judgment, *6 Mod.* 311. and there is no authority to support this indictment. On the other side it was said, that the prosecutor is a tradesman, so the attempt is public in its own nature. This is an indictment at common law, and the fact is a misdemeanor. No action would lie in this case, which is the reason given in the books quoted, why an indictment should be maintained. But judgment was arrested.

The false tokens must be specified in an indictment.

2 Sess. 1127.

Hil. 3 Geo.

2. Rex v.

Munoz.

He was convicted for procuring from one *Mary Kingsford* by false tokens a promissory note, under pretence that he would bring her money for it. And upon motion in arrest of judgment it was held, that it is necessary in an indictment to specify the false tokens. 2 *Cro.* 20. 4 *Co.* 40. *H. P. C.* 265. 1 *Lev.* 299. So the judgment was returned.

**Stat.** 30 *Geo.* 2. c. 24. [*A. D.* 1757. *Intituled*] “An act for the more effectual punishment of persons who shall attain, or attempt to attain, possession of goods or money, by false or untrue pretences; for preventing the unlawful pawning of goods; for the easy redemption of goods pawned; and for preventing gaming in public houses by journeymen, labourers, servants and apprentices.”

“Whereas divers evil-disposed persons, to support their profligate way of life, have by various subtle stratagems, threats and devices, fraudulently obtained divers sums of money, goods, wares and merchandizes, to the great injury of industrious families, and to the manifest prejudice of trade and credit; Therefore for the punishing all such offenders, Be it enacted by the king's most excellent majesty, by and with the advice and

and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-ninth day of *September* one thousand seven hundred and fifty-seven, all persons who knowingly and designedly, by false pretence or pretences, shall obtain from any person or persons, money, goods, wares or merchandizes, with intent to cheat or defraud any person or persons of the same; or shall knowingly send or deliver any letter or writing, with or without a name or names subscribed thereto, or signed with a fictitious name or names, letter or letters, threatening to accuse any person of any crime punishable by law with death, transportation, pillory, or any other infamous punishment, with a view or intent to extort or gain money, goods, wares or merchandizes from the person or persons so threatened to be accused, shall be deemed offenders against law and the publick peace; and the court before whom such offender or offenders shall be tried, shall in case he, she or they shall be convicted of any of the said offences, order such offender or offenders to be fined and imprisoned, or to be put in the pillory, or publickly whipped, or to be transported, as soon as conveniently may be (according to the laws made for transportation of felons) to some of his majesty's colonies or plantations in *America*, for the term of seven years, as the court in which any such offender or offenders shall be convicted shall think fit and order.

Persons convicted of obtaining money or goods by false pretences, or of sending threatening letters in order to extort money or goods,

may be punished by fine and imprisonment, or by pillory, whipping or transportation.

*Sec. 2.* " And be it further enacted by the authority aforesaid, that any justice or justices of the peace of the county, riding, division, city, liberty or place, before whom any person or persons charged on oath, by any credible person or persons, with having committed any of the offences intended by this act to be punished, shall be brought, shall examine by oath (which oath every such justice or justices is and are hereby empowered and required to administer) and such other lawful means as to any such justices shall seem meet, touching the matters complained of, and deal with the offender or offenders according to law; and if the party or parties charged as being the offender or offenders, shall be committed to prison, or be admitted to bail, to answer the matters complained of at the next general or quarter sessions of the peace, or next sessions of *Oyer and Terminer*, which shall be held for the county, riding, division, city, liberty or place wherein the offence shall be charged on oath, to have been committed, then such justice or justices shall bind over the prosecutor and prosecutors of every such offender and offenders to appear at the next general or quarter-sessions of the peace, or next sessions of *Oyer and Terminer* which shall be held for the county, riding, division, city, liberty or place wherein the offence shall be charged to have been committed, by recognizance, in such reasonable sum of money as to such justice or justices shall seem requisite, to prosecute such offender and offenders with effect; and if any money, goods, wares or merchandizes fraudulently obtained, shall appear to such justice or justices to exceed the amount or value of twenty pounds, then the recognizance to be taken in that behalf from the prosecutor or prosecutors, shall be in not less than double the amount or value the same shall appear before any such justice or justices to be worth.

Where a charge is made of any of the said offences, justice to enquire therein upon oath,

and to bind over the complainant, to appear and prosecute;

and his recognizance to be in proportion to the fraud.

*Sect. 3.* " And whereas divers of his majesty's subjects suffer great inconveniencies and frequent losses, by persons pawning or unlawfully disposing of the goods and chattels of others, and the persons so pawning or unlawfully disposing of the goods or chattels of others, from the meanness of their circumstances, are seldom able to make restitution or recompence to the parties injured, and the laws now in being are insufficient to punish such offenders; Be it therefore further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September* one thousand seven hundred and fifty-seven, if any person or persons shall knowingly and designedly pawn or exchange, or unlawfully dispose of the goods or chattels of any other person or persons, not being employed or authorized by the owner or owners thereof so to do, and shall be thereof convicted by the oath of any credible witness or witnesses, or by the confession of the person or persons charged with such offence, before any such justice or justices of the peace as aforesaid (which oath every such justice as aforesaid is hereby impowered and required to administer); every such offender shall, for every such offence, forfeit the sum of twenty shillings; and in case the said forfeiture shall not be forthwith paid, the justice or justices of the peace as aforesaid, before whom such conviction shall be had, shall commit the party or parties so convicted to the house of correction, or some other publick prison of the county, riding, division, city or place wherein the offender or offenders shall reside or be convicted, there to remain and be kept to hard labour for the space of fourteen days, unless the said forfeiture shall be sooner paid; and if within three days before the expiration of the said fourteen days, the said forfeiture shall not be paid, the said justice or justices is and are hereby required to order, upon the application of the prosecutor or prosecutors, the person or persons so convicted to be publicly whipped in the house of correction or prison to which the offender or offenders shall be committed, or in some open publick place of the city, riding, division, town or place wherein the offence shall have been committed, as to such justice or justices shall seem proper; and the said respective forfeitures when recovered, shall be applied towards making satisfaction thereout to the party or parties injured, and defraying the costs of the prosecution, as shall be adjudged reasonable by the justice or justices before whom such conviction shall be had; but if the party or parties injured shall decline to accept of such satisfaction and costs; or if there shall be any overplus of the said respective forfeitures, after making such satisfaction, and paying such costs as aforesaid, then such respective forfeitures, or the over-plus thereof (as the case shall happen) shall be paid and applied to and for the use of the poor of the parish or place where the offence shall have been committed, and shall be paid to the overseers of the poor of such parish for that purpose.

*Sect. 4.* " And be it further enacted by the authority aforesaid, That all and every person and persons who, from and after the twenty-ninth day of *September* one thousand seven hundred and fifty seven, shall take by way of pawn, pledge or exchange, of or from any person or persons whom-

soever,

Penalty of  
20 s. on  
pawning, ex-  
changing, or  
disposing of  
goods with-  
out leave of  
the owner;

and on non-  
payment, to  
be committed  
for 14 days  
to hard la-  
bour,

and if not  
paid within  
that time, to  
be whipped,  
on application  
of the prose-  
cutor.

Application of  
the forfeitures.

Pawnbrokers  
to make entry  
of goods  
pawned,  
pledged or  
exchanged,

foever, any goods or chattels, of what kind foever the same shall be, shall forthwith enter or cause to be entered, in a fair or regular manner, in a book or books to be kept for that purpose, a description of the goods or chattels which he, she or they shall receive in pawn, pledge or exchange; and also the sum of money advanced or paid thereon, with the day of the month and year on which, and the name and place of abode of the person or persons by whom such goods and chattels were so pawned, pledged or exchanged, and also the name and place of abode of the owner or owners thereof, according to the information of the person pawning or pledging, or exchanging the same; and shall at the same time give a duplicate or copy thereof to the person or persons so pawning, pledging or exchanging the said goods or chattels, if required; for which the person or persons giving such duplicate or copy, shall be paid by the person or persons who shall so pawn, pledge or exchange such goods or chattels the sum of one half-penny, on goods and chattels pawned for less than twenty shillings, and one penny on goods or chattels pawned for twenty shillings, and not exceeding five pounds; and for every such duplicate upon goods or chattels pawned for any larger sum, the sum of two pence, and no more; and in default of making such entry, and giving such duplicate or copy, if required as aforesaid, he, she or they shall respectively for every offence forfeit the sum of five pounds, to be levied by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hand and seal, or hands and seals of any justice or justices of the peace of the county, riding, division, city, liberty or place where the offence shall be committed; which respective forfeitures when levied, shall be paid and applied to the use of the poor of the parish or place wherein the offence shall be committed.

and a duplicate, if required, to be given thereof to the pawner, upon paying for the same.

Penalty; 1. on default of making such entry, and giving such duplicate.

*Sett. 5.* " And whereas it sometimes happens that the goods or chattels pledged and pawned as aforesaid, are spoiled and damaged, or rendered of less value than when the same were pledged or pawned, through the neglect, default, or misbehaviour of the person or persons to whom the same were so pledged or pawned, his, her or their agents or servants, either by wearing or using thereof, or by letting the same out to hire; Be it therefore enacted by the authority aforesaid, That if in the course of any of the aforesaid proceedings, before any justice or justices of the peace, in pursuance of, or under this act, it shall appear or be proved to the satisfaction of the justice or justices upon oath or solemn affirmation as aforesaid, that any of the goods or chattels so pawned as aforesaid, are become or have been rendered of less value than the same were at the time of pawning or pledging thereof, by or through the default, neglect, or wilful misbehaviour of the person or persons to whom the same were so pledged or pawned, his, her or their executors, administrators or assigns, agents or servants; then, and in any such case, it shall be lawful, and every such justice or justices is and are hereby required to allow or award a reasonable satisfaction to the owner or owners of such goods or chattels, in respect of such damage; and the sum or sums of money so allowed or awarded shall be deducted out of the principal and interest, and allowance for warehouse-room, which shall appear to be due to any person or persons, to whom the same

Where goods pawned shall be damaged thro' neglect of the pawnbroker.

were so pledged or pawned, his, her or their executors, administrators or assigns; and in all cases where the goods and chattels pawned as aforesaid, shall have been damaged as aforesaid, it shall be sufficient for the pawner or pawners, his, her or their executors, administrators or assigns, to pay or tender the money upon the balance, after deducting out of the principal and interest, and money payable for warehouse-room as aforesaid, for the goods or chattels pawned, such reasonable satisfaction in respect to such damage, as any such justice or justices shall order or award; and upon so doing, the justice or justices shall proceed as if the pawner or pawners, his, her or their executors, administrators or assigns, had paid or tendered the whole money due for the principal, interest, and warehouse-room as aforesaid."

Persons buying or taking in pledge linen or apparel, intrusted to others to wash or mend, &c. to forfeit double the sum, and restore the goods.

*Sett. 6.* " And be it enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September* one thousand seven hundred and sixty seven, if any person or persons shall knowingly buy or take in as a pledge any linen or apparel, intrusted to any other person or persons to wash, scour, iron, mend or make up, and shall be convicted of the same, on the oath of one credible witness, or on confession of the party, before one or more justice or justices, every such person or persons shall forfeit double the sum given for or lent on the same, to be paid to the poor of the parish where the offence is committed, to be recovered in the manner other forfeitures are by this act directed to be recovered; and shall likewise be obliged to restore the said goods to the owner in the presence of the said justice or justices."

Persons offering goods to sale, pawn or exchange, not giving a good account of themselves, may be detained, and carried before a justice.

*Sett. 7.* " And be it further enacted by the authority aforesaid, That in case any person or persons, who shall offer by way of pawn, pledge, exchange or sale, any goods or chattels, shall not be able, or shall refuse, to give a satisfactory account of himself, herself or themselves, or of the means by which he, she or they became possessed of such goods or chattels; or if there shall be any other reason to suspect that such goods or chattels are stolen, or otherwise illegally or clandestinely obtained; it shall and may be lawful for any person or persons, his, her or their servants or agents, to whom such goods or chattels shall be so offered, to seize and detain such person or persons, and the said goods or chattels, and to deliver such person or persons, as soon as conveniently may be, into the custody of the constable, or other peace officer, who shall, and is hereby required, immediately to convey such person or persons, and the said goods or chattels, before some justice or justices of the peace of the county, riding, division, city, liberty or place, wherein the offence shall be committed; and if such justice or justices shall, upon examination and enquiry, have cause to suspect that the said goods or chattels were stolen, or illegally or clandestinely obtained, it shall and may be lawful for such justice or justices to commit such person or persons into safe custody, for any time not exceeding the space of six days, in order to be further examined; and if upon either of the said examinations, it shall appear to the satisfaction of such justice or justices, that the said goods or chattels were stolen, or illegally or clandestinely obtained, the said justice or justices is and are hereby

Justice may commit the party.

by authorized and required to commit the party or parties offending to the common gaol or house of correction of the county, riding, division, city, liberty or place, wherein the offence shall be committed, there to be dealt with according to law."

*Sett.* 8. " Provided nevertheless, and be it further enacted, That in case such goods or chattels so seized and detained as aforesaid, shall afterwards appear to be the property of the person or persons who offered the same to be pawned, pledged, exchanged or sold, or that he, she or they was or were authorized by the owner or owners thereof to pawn, pledge, exchange or sell the same then and in such case, the person or persons who shall so seize or detain the party or parties who offered the said goods or chattels, shall be, and he, she and they, is and are by this act indemnified for having so done."

The persons  
detaining the  
party and  
goods, in-  
demnified for  
so doing.

*Sett.* 9. " And, for the better enabling all persons to recover their goods or chattels, which, after the said twenty-ninth day of *September* one thousand seven hundred and fifty-seven, shall be unlawfully pawned or pledged to, or exchanged with, any person or persons whatsoever: Be it further enacted by the authority aforesaid, That if the owner or owners of any goods or chattels, unlawfully pawned, pledged or exchanged, shall make out, either on his, her or their oath, or by the oath of any credible witness, or (being one of the people called *Quakers*) by solemn affirmation, before any justice or justices of the peace, within his or their jurisdiction, that such owner or owners has or have had, his, her or their goods and chattels unlawfully obtained or taken from him, her or them, and that there is just cause to suspect that any person or persons, within the jurisdiction of any such justice or justices, hath or have knowingly and unlawfully taken to pawn, or by way of pledge, or in exchange, any goods or chattels of such owner or owners, and without the privity of, or authority from such owner or owners thereof; and shall make appear, to the satisfaction of any such justice or justices, probable grounds for such the suspicion of the owner or owners thereof; then and in any such case, any justice or justices of the peace, within his or their jurisdiction, may issue his or their warrant for searching, in the day-time, the house, warehouse or other place of any such person or persons, who shall be charged on oath or affirmation, as aforesaid, as suspected to have knowingly and unlawfully received or taken to pawn, or by way of pledge, or in exchange, any such goods or chattels, without the privity of, or authority from the owner or owners thereof; and if the occupier or occupiers of any house, warehouse or other place, wherein any such goods or chattels shall, on oath or affirmation as aforesaid, be charged or suspected to be, shall after the said twenty-ninth day of *September* one thousand seven hundred and fifty-seven, on request made to him, her or them, to open the same, by any peace officer authorized to search there, by warrant from a justice or justices of the peace, for the county, riding, division, city, liberty, town or place, in which such house, warehouse or other place shall be situate, refuse to open the same, and permit the same to be searched, it shall be lawful for any such peace officer to break open any such house, warehouse or other place, in the day-

Justice, upon  
oath of the  
owner, to issue  
a warrant to  
search the sus-  
pected per-  
son's house.

Upon refusal  
of admittance,  
officer may  
break open  
the door.

time,

Persons hind-  
ering such  
search, for-  
feit 5 l.

and on non-  
payment, are  
to be commit-  
ted to hard  
labour.

The goods  
found to be  
restored to the  
owner.

time, and to search as he shall think fit therein, for the goods or chattels suspected to be there, doing no wilful damage; and if any person or persons shall oppose or hinder any such search, and shall thereof be convicted before any such justice or justices, by the oath of one or more credible witness or witnesses, every person so offending in the premises shall forfeit for every such offence the sum of five pounds; and in case such forfeiture be not immediately paid down, or within the space of twenty-four hours, the justice or justices, before whom such conviction shall be had, shall commit the party or parties so convicted to the house of correction, or some other publick prison of such county, riding, division, city, liberty, town or place, there to be kept to hard labour for any time not exceeding one month, nor less than five days, unless in the mean time such forfeiture shall be paid; and such forfeiture, when recovered, shall forthwith go and be applied to and for the use of the poor of the parish wherein such offence shall have been committed; and if upon the search of the house, warehouse or other place, of any such suspected person or persons, as aforesaid, any of the goods or chattels which shall have been so knowingly and unlawfully pawned, pledged or exchanged, as aforesaid, shall be found, and the property of the owner or owners from whom the same shall have been unlawfully obtained or taken, shall be made out, to the satisfaction of any such justice or justices, by the oath of one or more credible witness or witnesses, or (if any such witness or witnesses be of the people called *Quakers*) by solemn affirmation, or by the confession of the person or persons charged with any such offence, any such justice or justices shall thereupon cause the goods and chattels found on any such search, and unlawfully pawned, pledged or exchanged, as aforesaid, to be forthwith restored to the owner or owners thereof."

Goods pawn-  
ed for a sum  
not exceeding  
10 l. may be  
recovered  
within two  
years.

*Sett.* 10. " And whereas goods and chattels are often pawned or pledged for securing the payment of money lent thereon, and the interest thereof; and altho' when the money becomes due, the borrowers, or their representatives, are desirous to repay the same, and the interest due thereon, and make tender thereof to the person or persons with whom the same are so pawned or pledged, they are frequently under great difficulties to get back the goods and chattels so pawned, and are often under necessity to commence suits at law for the recovery thereof, to their great expence; for remedy whereof, Be it enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September* one thousand seven hundred and fifty-seven; if any goods or chattels shall be pawned or pledged for securing any money lent thereon, not exceeding in the whole the principal sum of ten pounds, and the interest thereof; and if within two years after the pawning or pledging thereof, proof having been made on oath, by one or more credible witness or witnesses, or by producing a duplicate of the entry directed to be given by this act as aforesaid, before any such justice or justices, or by solemn affirmation (if the person be of the people called *Quakers*) to the satisfaction of any such justice or justices, of the pawning or pledging of any such goods or chattels within the said space of two years, any such pawner or pawners who was or were the real owner or owners of such goods

goods or chattels at the time of the pawning or pledging thereof, his, her or their executors, administrators or assigns, shall tender unto the person or persons who lent on the security of the goods or chattels pawned, his executors, administrators or assigns, the principal money borrowed thereon, and all interest due for the same, together with such charges for the warehouse-room of the goods or chattels pawned, as shall be agreed on at the time of the pawning of such goods and chattels; and the person who took such goods or chattels in pawn, his executors, administrators or assigns, shall thereupon neglect or refuse to deliver back the goods or chattels so pawned, for any sum or sums of money not exceeding the said principal sum of ten pounds, to the person or persons who borrowed the money thereon, his, her or their executors, administrators or assigns; then, and in any such case, on oath, or (if the person or persons be of the people called *Quakers*) on solemn affirmation thereof, made by the pawner or pawners thereof, his, her or their executors, administrators or assigns, or some other credible person, any justice or justices of the peace of the county, riding, division, city, liberty or place, where the person or persons who took such pawn as aforesaid, his executors, administrators or assigns, shall dwell, on the application of the borrower or borrowers, his, her or their executors, administrators or assigns, is and are hereby required to cause such person or persons who took such pawn, his, her or their executors, administrators or assigns, within the jurisdiction of the justice or justices, to come before such justice or justices; and such justice or justices is and are hereby authorized and required to examine on oath, or solemn affirmation, as the case may require, the parties themselves, and such other credible persons as shall appear before him or them, touching the premises; and if tender of the principal money due, and all interest thereof, together with charges for warehouse-room, as aforesaid, shall be proved by oath or affirmation, as aforesaid, to have been made, such principal money not exceeding the said sum of ten pounds, to the lender or lenders thereof, his, her or their executors, administrators or assigns, by the borrower or borrowers of such principal money, his, her or their executors, administrators or assigns, within the said space of two years after the said pawning or pledging of the goods or chattels, then on payment by the borrower or borrowers, his, her or their executors, administrators or assigns, of such principal money, and the interest due thereon, together with such charges for warehouse-room of the goods or chattels so pawned or pledged as aforesaid, to the lender or lenders, his, her or their executors, administrators or assigns; and in case the lender or lenders, his, her or their executors, administrators or assigns, shall refuse to accept thereof, on tender thereof to him, her or them made, by the borrower or borrowers thereof, his, her or their executors, administrators or assigns, before any such justice or justices, such justice or justices shall thereupon, by order under his hand, or their hands, direct the goods or chattels so pawned, forthwith to be delivered up to the pawner or pawners thereof, his, her or their executors, administrators or assigns: And if the person or persons, who shall have lent any principal sum or sums of money, not exceeding in the whole the said sum of ten pounds,

Justice, on complaint of pawnbroker refusing to deliver goods, to summon and examine the parties;

and proof being made of tender, and payment of the principal interest and charges;

or tender being then also made, and refused;

justice to make an order for the immediate delivery of the goods,

on refusal, to commit the



pawnbroker  
till satisfaction  
be made.

pounds, on any goods or chattels pawned, his, her or their executors, administrators or assigns, shall neglect or refuse to deliver up or make satisfaction for the goods or chattels, which shall be proved, to the satisfaction of such justice or justices as aforesaid, to have been so pawned, as any such justice or justices of the peace, as aforesaid, shall order and direct; then any such justice or justices shall, and is and are hereby authorized and required to commit the party or parties, so refusing to deliver up or make satisfaction for the same, to the house of correction, or some other publick prison of the county, riding, division city or place, wherein the offender or offenders shall reside, or be convicted; there to remain without bail or mainprize, until he, she or they, shall deliver up the goods or chattels so pawned, and continuing redeemable, as aforesaid, according to the order of such said justice or justices, or make satisfaction or compensation for the value thereof, to the party or parties intitled to the redemption of such goods or chattels so pawned, and continuing redeemable as aforesaid."

Goods re-  
maining unre-  
deemed for 2  
years, are for-  
feited,  
and may be  
sold;  
overplus to be  
accounted for.

*SECT. 11.* "And be it further enacted by the authority aforesaid, That if any pawn or pledge of goods or chattels, of what kind soever, made by or for the proprietor or proprietors thereof, shall remain unredeemed for the space of two years, then every such pawn or pledge shall be forfeited; and it shall and may be lawful to and for every such person or persons, to whom such goods or chattels have been pawned or pledged, to sell the same; any law, statute, custom or usage to the contrary thereof notwithstanding; subject nevertheless to account for the overplus, if any shall be, of the produce of all such goods or chattels which have been pledged for two pounds and upwards, as by this act directed."

Entry to be  
made of sale of  
goods pawned  
for 2 l. or up-  
wards.

*SECT. 12.* "Provided always, and be it further enacted by the authority aforesaid, That every person or persons, to whom any goods or chattels shall have been pawned or pledged, shall from time to time enter in a book or books to be kept for that purpose, a true and just account of the sale of all goods and chattels pawned to him, or them, for two pounds, or upwards, which shall be sold by any such person or persons, expressing the day when, the money for which, and the name and place of abode of the person to whom such goods or effects pawned were sold; and in case any such goods or effects shall be sold for more than the principal money, with interest, and the charge of warehouse-room, as aforesaid, due thereon at the time of such sale, the overplus shall by every such person or persons be paid on demand to the person by or on whose account such goods or chattels were pawned, his, her or their executors, administrators or assigns; and such person or persons who pawned or pledged such goods or chattels, his her or their executors, administrators or assigns, shall, for his her or their satisfaction in this matter, be permitted to inspect the entry to be made as aforesaid of every such sale, paying for such inspection the sum of one penny, and no more; and in case any person or persons shall refuse to permit any such person or persons, who pawned or pledged such goods or chattels, to inspect such entry as aforesaid in any such book or books, such person or persons, if an executor or executors, administrator or administrators, or assignee or assignees, at such time producing his, her or their letters testa-

Overplus ari-  
sing from the  
sale, to be paid  
on demand to  
the owner;

On refusal of  
inspection,

testa-

testamentary, letters of administration or assignment; or in case the goods or effects were sold for more than the sum entered in any such book or books; or if any such person or persons shall not make such entry, or shall not have *bona fida* sold the goods or chattels pawned for the best price that he, she or they might have reasonably had or got for the same, without his, her or their wilful default; or shall refuse to pay such overplus, upon demand, to the pawner or pawners, his, her or their executors, administrators or assigns; he or they producing such letters testamentary, letters of administration or assignment; every such person or persons so offending shall for every such offence forfeit treble the value of such goods and chattels to the person or persons by whom, or on whose account, such goods or chattels were pawned, his, her or their executors, administrators or assigns, to be recovered by action of debt, bill, plaint or information, in any of his majesty's courts of record at *Westminster*." or the goods being sold for more than entered, &c.

*Sec. 13.* " Provided always, and be it further enacted by the authority aforesaid, That no fee or gratuity whatsoever shall be had, taken or received, for any summons or summonses, warrant or warrants, granted by any justice or justices of the peace, in pursuance of this act, so far as the same relates to goods and chattels pawned, pledged, taken in exchange, or unlawfully disposed of." Pawnbroker to forfeit treble the value.

*Sec. 14.* " And whereas the occupiers of many licensed publick houses, and of other houses wherein wines and liquors are sold, frequently suffer gaming therein, and journeymen, labourers, servants and apprentices by means of such gaming therein, not only mispend their time, but are often reduced to poverty and great distress; Be it therefore further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September* one thousand seven hundred and fifty-seven, if any person or persons licensed to sell any sorts of liquors, or who shall sell, or suffer the same to be sold, in his, her or their house or houses, or in any outhouses, ground or apartments thereto belonging, shall knowingly suffer any gaming with cards, dice, draughts, shuffle-boards, mississippi or billiard tables, skittles, nine pins, or with any other implement of gaming, in his, her or their houses, outhouses, ground or apartments thereto belonging, by any such journeymen, labourers, servants or apprentices; and shall be convicted of the said offence on their own confession, or on the oaths of one or more credible witnesses or witnesses, before any justice or justices of the peace for the county, riding, division, city, liberty or place, wherein the offence shall be committed, within six days after any offence shall be committed he, she or they so offending, shall for every such offence forfeit and pay the sum of forty shillings; and for every like offence which he, she or they shall afterwards be convicted of, before any such justice or justices of the peace, he, she or they so offending, shall forfeit the sum of ten pounds; all which sums of money, so forfeited, shall be levied by distress and sale of the offenders goods and chattels, by warrant from the justice or justices before whom such offender or offenders shall be convicted; and which warrant every such justice or justices is and are hereby required and authorized to grant; and three fourths of all sums which shall be so forfeited" Sommonses and warrants to be issued without fee.

feited shall, on the recovery thereof, be paid to the churchwardens of the parish in which the offence shall be committed, for the use of the poor of such parish; and the other fourth part thereof shall be paid to the person or persons on whose information the party or parties offending shall have been convicted of the offence."

On complaint  
of journey-  
men, &c.  
gaming in  
publik houses,  
justice to issue  
his warrant  
for appre-  
hending them,

whouponcon-  
viction are to  
forfeit not ex-  
ceeding 20s:  
nor less than  
5 s.

Offender not  
paying the for-  
feiture, to be  
committed to  
hard labour.

Justice, upon  
complaint, to  
issue his war-  
rant for bring-  
ing the of-  
fender before  
him.

*Secl. 15.* "And be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September* one thousand seven hundred and fifty-seven, if any journeyman, labourer, apprentice or servant, shall game in any house, out-house, ground or apartments thereto belonging wherein any liquors shall be sold, and complaint thereof shall be made on oath before any justice or justices of the peace for the county, riding division, city, liberty or place where the offence shall have been committed, every such justice or justices shall thereupon issue his or their warrant to some constable, tythingman, headborough or other peace officer of the parish, precinct or place, wherein the offence shall be charged to have been committed, or where the offender shall reside, to apprehend and carry every such offender before some justice or justices of the peace acting for the county, riding, division, city, liberty or place, where the offence shall be committed, or where the offender shall reside; and if the person who shall be apprehended shall be convicted of the said offence by the oath of one or more credible witness or witnesses, or on his own confession, every such offender shall forfeit any sum not exceeding twenty shillings, nor less than five shillings, as the justice or justices before whom any such offender or offenders shall be convicted shall think fit and order, every time he shall so offend, and be convicted as aforesaid; and one fourth of all such money so forfeited shall, on the conviction of any such offender or offenders, be paid to the person or persons on whose information the party or parties offending shall be convicted, and the other three fourths thereof shall be applied for the use of the poor of the parish wherein the offence shall have been committed, and shall be paid to the overseers of the poor of such parish for that purpose; and if the party who shall be convicted of the offence last-mentioned, shall not forthwith pay down the said sum so forfeited by him, any such justice or justices shall, by warrant under his hand, or their hands, commit every such offender to the house of correction, or some other prison, of the county, riding division, city, liberty or place, in which he shall be apprehended; there to remain and be kept to hard labour for any time not exceeding the space of one month, or until he shall pay the sum of money so forfeited."

*Secl. 16.* "And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any justice or justices of the peace of any county, riding, division, city, liberty, town or place, and he and they is and are hereby required, upon complaint made to him upon oath of any offence committed against this act, within the same county, riding, division, city, liberty, town or place, to issue his warrant for bringing before him, or some other justice or justices of the peace of any county, riding, division, city, liberty, town or place, the person or persons charged with such offence, and the justice or justices before whom such person or persons

shall

shall be brought, is hereby authorized and required to hear and determine the matter of every such complaint, and to proceed to judgment and conviction thereupon, as by this act is directed; and if it shall appear by oath of any credible person or persons, to the satisfaction of any such justice or justices, that any person or persons, within the jurisdiction of such justice or justices, can give or offer material evidence on behalf of the prosecutor, against any offender or offenders against the true intent and meaning of this act, or on behalf of the person accused, and who will not voluntarily appear before such justice or justices to be examined, and give his, her or their evidence, concerning the premisses; every such justice or justices is and are hereby authorized and required to issue his or their summons, to convene every such person or persons within his or their jurisdiction before him or them, to be examined upon oath concerning the premisses; and if any person so summoned shall neglect or refuse to appear on such summons, and no just excuse shall be offered for such neglect or refusal, then (after proof by oath of such summons having been duly served upon him, her or them for that purpose) any such justice or justices is and are hereby authorized and required to issue his or their warrant to bring every such witness and witnesses, within his or their jurisdiction, before him or them; and on the appearance of any such witness before any such justice or justices, any such justice or justices is and are hereby authorized and empowered to examine upon oath every such witness; and if any such witness, on his or her appearance, or being brought before any such justice or justices, shall refuse to be examined on oath concerning the premisses, without offering any just cause for such refusal, it shall be lawful for any such justice or justices, by warrant under his or their hand and seal, or hands and seals, to commit every person so refusing to the publick prison of the county, riding, division, city or place, in which the person or persons so refusing to be examined on oath, shall be brought before any such justice or justices, there to remain for any time not exceeding three months, as any such justice or justices shall direct; and if on such examination, any such justice or justices shall deem the evidence of any such witness or witnesses to be material, any such justice or justices may bind over any such witness, unless a feme covert, or one under the age of twenty-one years, by recognizance, in a reasonable penalty, to appear and give evidence at the next general or quarter-sessions of the peace, or sessions of *oyer and terminer*, as in such recognizance shall be mentioned.”

and may summon witnesses.

and if the witness refuses to give evidence, he may be committed to hard labour.

Material witness may be bound over to give evidence before a court.

Offenders not to be admitted to bail, till due notice has been given to the prosecutor, &c.

Offender to be tried at the next session, unless the court put off the trial.

*Sec. 17.* “ And be it further enacted by the authority aforesaid, That no persons charged on oath with being guilty of any of the offences punishable by this act, and which shall require bail, shall be admitted to bail before twenty-four hours notice, at least, shall be proved by oath to have been given in writing to the prosecutor, of the names and places of abode of the persons proposed to be bail for any such offender or offenders, unless the bail offered shall be well known to the justice or justices, and he and they shall approve of them; and every such offender and offenders, who shall be bound over to the general quarter-sessions of the peace, or gaol-delivery of the county, city or town wherein the offence charged on him shall have been committed, to answer any such offences punishable by this act,

shall be tried at such general quarter-sessions of the peace, or sessions of Oyer and Terminer and gaol-delivery which shall be held next after his, her or their being apprehended, unless the court shall think fit to put off the trial on just cause made out to them.

Inhabitants  
where the of-  
fence is com-  
mitted, deem-  
ed competent  
witnesses.

*Señ. 18.* Provided always, and be it enacted by the authority aforesaid, That in all actions, suits, trials and other proceedings in pursuance of this act, or in relation to any matter or thing herein contained, any inhabitant of the parish, town or place, in which any offence or offences shall be committed, contrary to the true intent and meaning of this act, shall be admitted to give evidence, and shall be deemed a competent witness, notwithstanding his, her or their being an inhabitant or inhabitants of the parish, town or place wherein any such offence or offences shall have been committed.

Conviction to  
be drawn up  
in the follow-  
ing form ;

*Señ. 19.* “ And be it further enacted by the authority aforesaid, That the justice or justices before whom any person shall be convicted, in manner prescribed by this act, shall cause such respective conviction to be drawn up in the form or to the effect following ; that is to say,

To wit. { **B** E it remembered, That on this Day of  
in the Year of his Majesty's Reign, *A. B.* is con-  
victed before of his Majesty's Justices of the  
Peace, for the said county of or for the  
Riding or Division of the said County of or for the  
City, Liberty or Town of (*As the Case shall hap-*  
*pen to be*) for and the said do ad-  
judge him or her to pay and forfeit for the same, the sum of

*Given under*

*the Day and Year aforesaid.*

and to be writ-  
ten on parch-  
ment, and  
transmitted to  
the quarter-  
sessions to be  
filed.

Justices at the  
quarter sessi-  
ons to deter-  
mine appeals.

And the said justice or justices, before whom such conviction shall be had, shall cause the same to be drawn up, in the form aforesaid, to be fairly written upon parchment, and transmitted to the next general quarter-session of the peace to be held for the county, riding, division, city, town, liberty or place wherein such conviction was had, to be filed and kept amongst the records of the said general or quarter-sessions ; and in case any person or persons so convicted, shall appeal from the judgment of the said justice or justices, to the said general or quarter-sessions, the justices in such general or quarter-sessions are hereby required upon receiving the said conviction, drawn up in the form aforesaid, to proceed to the hearing and determination of the matter of the said appeal, according to the directions of this act ; any law or usage to the contrary notwithstanding.

Indictment or  
conviction not  
removeable by  
certiorari.

Appeal may  
be made to  
the quarter-  
sessions ;

*Señ. 20.* “ And be it further enacted by the authority aforesaid, That no *certiorari* shall be granted to remove any indictment, conviction or other proceedings had thereon in pursuance of this act.

*Señ. 21.* “ Provided always, and it is hereby further enacted by the authority aforesaid, That if any person convicted of any offences punishable by this act, shall think him or herself aggrieved by the judgment of the justice or justices before whom he or she shall have been convicted, such

such persons shall have liberty to appeal to the justices at the next general or quarter-sessions of the peace which shall be held for the county, riding, division, city, liberty, town or place, where such judgment shall have been given; and that the execution of the said judgment shall, in such case, be suspended, the person so convicted entering into a recognizance at the time of such conviction, with two sufficient sureties, in double the sum which such person shall have been adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and to be forth-coming, to abide the judgment and determination of the justices in their said next general or quarter-sessions; which recognizance the said justice or justices, before whom such conviction shall be had, is hereby impowered and required to take; and the justices in the said general or quarter-sessions are hereby authorized and required to hear and finally determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party; and if, upon the hearing of the said appeal, the judgment of the justice or justices, before whom the appellant shall have been convicted, shall be affirmed, such appellant shall immediately pay the sum which he or she shall have been adjudged to forfeit, together with such costs as the justices in the said general or quarter-sessions shall award to be paid, for defraying the expences sustained by the defendant or defendants in such appeal; or in default of making such payments, shall suffer the respective pains and penalties by this act inflicted upon persons respectively, who shall neglect to pay, or shall not pay the respective sums or forfeitures by this act, to be paid by, or imposed upon, persons respectively, who shall be convicted by virtue of this act.

and execution respited, the party entering into recognizance to prosecute the appeal.

Justices to determine the appeal, and award costs. On affirmation of the judgment, appellant to pay the fine and costs.

*Sec. 22.* "And be it further enacted by the authority aforesaid, That no person, who, by virtue of this act, shall be punished for any offence or offences by him, her or them committed, shall be punished for the same offence or offences, under any other law or statute; and that if any action or suit shall be commenced against any person or persons for any thing done in pursuance of this act, the defendant or defendants in any such action or suit may plead the general issue, and give this act and the special matter in evidence, at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear so to have been done, or a verdict shall be recorded for the defendant or defendants; and if the plaintiff shall be nonsuited or discontinue his action, after the defendant or defendants shall have appeared; or if judgment shall be given upon any verdict or demurrer against the plaintiff, the defendant or defendants shall and may recover double costs, and have the like remedy for the same, as any defendant or defendants hath or have in other cases by law, for recovery of his or their costs.

None to be punished a second time for the same offence.

General issue.

Double costs.

*Sec. 23.* "And be it further enacted by the authority aforesaid, That the statute made in the twenty-fourth year of his present majesty's reign, intituled, "An act for the rendering the justices of the peace more safe in the execution of their office, and for indemnifying constables and others acting in obedience to their warrant," so far as the said act relates to the rendering the justices more safe in the execution of their office, shall extend and be construed to extend to the justice or justices of the peace acting under

Clause in act 24 G. 2. c. 44. extended to justices acting under this act.

the authority or in execution of this act; and no action or suit shall be had or commenced against, or writ issued out, or copy or writ served upon any peace officer or officers, for any thing done in the execution of this act, until notice in writing shall have been given to him or them, or left at his or their usual place of abode, by the attorney for the party commencing such action, or suing out or serving the copy of the said writ; which said notice in writing shall contain the name and place of abode of the person who is to bring such action, together with the cause of action or complaint; and the name and place of abode of the said attorney shall be under-wrote or indorsed thereon; and any peace officer or officers shall be at liberty, and may by virtue of this act, at any time within fourteen days after such notice, tender or cause to be tendered any sum or sums of money, as amends for the injury complained of, to the party complaining, or to the said attorney; and if the same is not accepted of, the defendant or defendants, in such action or actions, may plead such tender in bar of such action or actions, together with the general issue, or any other plea, with leave of the court; and if upon issue joined upon such tender, the jury shall find the amends tendered to have been sufficient, the said jury shall find a verdict for the defendant or defendants; and in such case, or if the plaintiff shall become nonsuit or discontinue his action, or if judgment shall be given for the defendant or defendants upon demurrer, the defendant or defendants shall be intitled to his and their costs; and if the jury shall find that no such tender was made, or that the amends tendered were not sufficient, and also shall find against the defendant or defendants on such other plea or pleas by them pleaded, the said jury shall give a verdict for the plaintiff, and such damages as they shall think proper, for which the plaintiff shall have judgment, together with his, her or their full costs."

Notice to be given to peace officer, before commencing the suit against him.

Tender of amends may be made by him,

and pleaded in bar of the action.

If none, or insufficient tender has been made, plaintiff, upon a verdict, to recover.

## Church and Church-yard.

**L**ORD Coke says, that by the common law and general custom of the realm, it was lawful for bishops, earls and barons to build churches or chapels within their fees; and hereof king *John* informed pope *Innocent* the third (naming only, *honoris causa*, the bishops and baronage of *England*, albeit this liberty extended to all,) with request, that this liberty to the baronage might be confirmed. To these letters the pope made this answer, *Quod enim de consuetudine regni Anglorum procedere regia serenitas per suas literas intimavit, ut liceat tam episcopis, quam comitibus et baronibus, ecclesias in feodo suo fundare; laicis quidem principibus id licere nullatenus denegamus, dummodo diocesani episcopi eis suffragetur assensus, et per novam structuram veterum ecclesiarum justitia non ledatur.* Whereas the baronage had absolute liberty before, now the pope addeth the consent of the bishop; but that addition

addition bound not, seeing it was against the liberty of the baronage warranted by the common law; and he says he would not have rehearsed this epistle, but that it is a proof what the general custom of the realm was, concerning the building of churches by the baronage of *England*. And albeit they might build churches without the king's licence, yet could they not erect a spiritual politic body to continue in succession, and capable of endowment, without the king's licence: but by the common law, before the statute of mortmain, they might have endowed this spiritual body once incorporated, *perpetuis futuris temporibus*, without any licence from the king or any other. 3 *Inst.* 201, 202. Which body so incorporated, is not dissolved, tho' the church is drowned, or otherwise destroyed; but in that case, one may be presented to the rectory, and shall be liable to annuities and other charges; the church in consideration of law, being properly the *cure of souls* and the *right of tithes*. *Gibf.* 189.

But Dr. *Gibson* observeth on the contrary, that no person may erect a church without the leave and consent of the bishop. And this he says, is agreeable to the rule, both of the civil and canon law, and was made an express law of the church of *England* many years before the reign of king *John*, viz. in the council of *Westminster* in the time of king *Stephen*. Nor could this right of the bishop be defeated by the exemption of religious persons from episcopal jurisdiction; who might not, under colour of such exemptions, erect churches in any part of their possessions not exempt, without leave from the bishop; as we find it especially adjudged, in the body of canon law. And to this, the pope's answer to king *John* is exactly agreeable, *laicis quidem principibus id licere nullatenus denegamus, dummodo dioecesani episcopi eis suffragetur assensus*. And king *John*'s letter doth not relate to a right of erecting with or without licence; since the occasion of it was, the building of a collegiate chapel by the archbishop, who was his own licence; and the only objection was, that the building of it would be prejudicial to the church of *Canterbury*. *Gibf.* 188. 1 *Burn Ec. L.* 232.

But it is to be observed, that these two assertions are not contradictory; for the one says only, that by the civil and canon law it might not be done; and the other says, that it might be done by the common law, altho' Lord *Coke* produceth no instances, before the reign of king *John* or after, of churches erected without the licence of the diocesan. And it seemeth to amount to the same thing, so long as the bishop hath power (unto which Lord *Coke* assenteth) after the church is erected, to withhold or deny the consecration. 1 *Burn Ec. L.* 233.

And not only the bishop, by refusing to consecrate, may hinder the establishment of a new church or chapel in any parish; but also any other person thinking himself injured thereby, as by incroaching upon his ground, stopping his way, or the like, may apply to the temporal courts, who (as they see cause) will grant him redress. 1 *B. Ec. L.* 233.

The ancient manner of founding churches was, after the founders had made their application to the bishop of the diocese, and had his licence,

the



## Church and Church-yard.

the bishop or his commissioners set up a cross, and set forth the ground, where the church was to be built; and then the founders might proceed in the building of the church, and when the church was finished, the bishop was to consecrate it, but not till it was endowed, and before the sacraments were not to be administered in it. *Degge, part 1. c. 12.*

For albeit churches or chapels may be built by any of the king's subjects, yet before the law takes notice of them to be churches or chapels, the bishop is to consecrate or dedicate the same. And this is the reason, that a church or not a church, a chapel or not a chapel, shall be tried and certified by the bishop. *3 Inst. 203.*

Original of  
church-yards.

The churchyard is called a dormitory, (from *dormio*, to sleep) because the dead bodies are said there to sleep until the resurrection. *2 Inst. 489.*

As to the original of burying places, many writers have observed, that at the first erection of churches, no part of the adjacent ground was allotted for interment of the dead, but some place for this purpose was appointed at a further distance. Especially in cities and populous towns; where agreeably to the old *Roman* law of the twelve tables, the place of inhumation was without the walls, first indefinitely by the way side, then in some peculiar inclosure assigned to that use. Therefore the *Roman* pontifical, amongst other inventions, is in this respect convicted of error, that it makes pope *Marcellus* under the tyrant *Maxentius* appoint twenty-five churches in *Rome* to bury martyrs in, when at that time laws and customs did forbid all burial within the city. Hence the *Augustine* monastery was built without the walls of *Canterbury* (as *Ethelbert* and *Augustine* in both their charters intimate) that it might be a dormitory to them and their successors the kings and archbishops for ever. This practice of remoter burials continued to the age of *Gregory* the great, when the monks and priests, beginning to offer for souls departed, procured leave for their greater ease and profit, that a liberty of sepulture might be in churches, or in churches adjoining to them. This mercenary reason seems to be acknowledged by pope *Gregory* himself, whilst he allows, that when the paries deceasing are not burdened with heavy sins, it may then be a benefit to them to be buried in churches; because their friends and relations, as often as they come to these sacred places, seeing their graves, may remember them, and pray to *God* for them. After this, *Cuthbert* archbishop of *Canterbury* brought over from *Rome* this practice into *England*, about the year 750; from which time they date the original of church-yards in this island. This was a sufficient argument of the learned Sir *Henry Spelman*, to prove an inscription at *Glastenbury* to be a later forgery; because it pretends, *dominus ecclesiam ipsam cum cœmeterio dedicarat*, whereas there was no cœmeterium in *England* till above 700 years after the date of that fiction. The practice of burying within the churches did indeed (though more rarely) obtain before the use of church-yards; but was by authority restrained, when church-yards were frequent, and appropriated to that use. For among those canons which seem to have been made before *Edward* the Confessor, the ninth bears this title *De non sepeliendo in ecclesiis*, and begins with

with a confession that such a custom had prevailed, but must be now reformed, and no such liberty allowed for the future, unless the person be a priest or some holy man, who by the merits of his past life might deserve such a peculiar favour. However, at first it was the nave or body of the church, that was permitted to be a repository of the dead, and chiefly under arches by the side of the walls. *Lanfrank*, archbishop of *Canterbury*, seems to have been the first, who brought up the practices of vaults in chancels, and under the very altars, when he had rebuilt the church of *Canterbury*, about the year 1075. *Ken. Par. Ant.* 592, 593.

**Stat.** 13 *Ed.* 1. *ft.* 2. *c.* 6. [*A. D.* 1285.] partly intituled "fairs or markets shall not be kept in church-yards." "And the king commandeth and forbideth, that from henceforth neither fairs nor markets be kept in church-yards for the honour of the church."

**Stat.** 50 *Ed.* 3. *c.* 5. [*A. D.* 1376. intituled] "None shall arrest priests or clerks doing divine service."

*Item*, Because that complaint is made to our lord the king by the clergy of his said realm of *England*, that as well divers priests bearing the sweet body of our lord *Jesus Christ* to sick people and their clerks with them, as otherwise divers other persons of holy church, whiles they attend to divine services in churches, churchyards, and other places dedicate to *God*, be fundry times taken and arrested, by authority royal, and commandment of other temporal lords, in offence of *God*, and of the liberties of holy church, and also in disturbance of divine services afore said; (2) the same our lord the king, who would be fore displeased if any did in such manner, will and granteth, and defendeth upon grievous forfeiture, that none do the same from henceforth, so that collusion or feigned cause be not found in any of the said persons of holy church in this behalf." 1 R. 2. c. 15.

**Stat.** 1 *Ric.* 2. *c.* 15 [*A. D.* 1378. intituled] "The penalty for arresting of priests doing divine service."

*Item*, Because that prelates do complain themselves, that as well beneficed people of holy church, as other, be arrested and drawn out as well of cathedral churches, as of other churches and their churchyards, and sometime whiles they be intended to divine services, and also in other places, although they be bearing the body of our lord *Jesus Christ* to sick persons, and so arrested and drawn out, be bound and brought to prison, against the liberty of holy church: (2) It is ordained, that if any minister of the king, or other, do arrest any person of holy church by such manner, and thereof be duly convict, he shall have imprisonment, and then be ransomed at the king's will, and make gree to the parties so arrested; (3) provided always, that the said people of holy church shall not hold them within the churches or sanctuaries by fraud or collusion in any manner. (4) And therefore we command, that thou cause all the said statutes to be cried and published, and firmly kept through thy bailiwick, according to the form and tenour thereof 50 Ed. 3. c. 5.  
1 Mar. sess. 2.  
c. 3.  
2 Bulst. 72.  
2 Cr. 321.  
pl. 4.  
Brown: 301.

## Church and Church-yard.

thereof, and that do not omit in any wise. Given under the witness of our great seal the first day of *February* in the first year of our reign.

Also it is said, that arrests in civil cases ought not to be of persons going to or coming from church; but that a warrant from a justice of the peace for the king may be executed in such case. *Cro. Car.* 602. *Cro. Jac.* 321. 2 *Bulst.* 72. But although the officer may be punished for the arrest either in the spiritual or temporal courts, yet the arrest (if not on a *Sunday*) is good in law. *Watson's Comp. Incumb.* c. 34. p. 344.

**Stat. 5 & 6 Ed. 6. c. 4.** [*A. D.* 1552. *intituled*] “Against quarrelling and fighting in churches and church-yards.”

The penalty  
for striking or  
drawing a  
weapon in  
church or  
church-yard.  
*Hetley* 86.

Forasmuch as of late divers and many outrageous and barbarous behaviours and acts have been used and committed by divers ungodly and irreligious persons, by quarrelling, brawling, fraying and fighting openly in churches and church-yards: (2) Therefore it is enacted by the king our sovereign lord, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That if any person whatsoever shall, at any time after the first day of *May* next coming, by words only, quarrel, chide or brawl in any church or church-yard, that then it shall be lawful unto the ordinary of the place where the same offence shall be done, and proved by two lawful witnesses, to suspend every person so offending; that is to say, if he be a layman, *ab ingressu ecclesie*, and if he be a clerk, from the ministration of his office for so long time as the said ordinary shall by his discretion think meet and convenient, according to the fault.”

The penalty  
for smiting in  
a church, &c.

*Stat.* 2. “And further it is enacted by the authority aforesaid, That if any person or persons, after the said first day of *May* shall smite or lay any violent hands upon any other, either in any church or church-yard, that then *ipso facto* every person so offending shall be deemed excommunicate, and be excluded from the fellowship and company of Christ's congregation.”

The penalty  
for drawing  
or smiting with  
a weapon in  
the church,  
&c.  
2 *Leon.* 188  
*Cro. Jac.* 462.  
1 *Roll.* 90.

*Stat.* 3. “And also it is enacted by the authority aforesaid, That if any person after the said first day of *May* shall maliciously strike any person with any weapon in any church or church-yard, or after the same first day of *May* shall draw any weapon in any church or church-yard, to the intent to strike another with the same weapon, that then every person, so offending, and thereof being convicted by verdict of xij. men, or by his own confession, or by two lawful witnesses, before the justices of assize, justices of Oyer and Determiner, or justices of peace in their sessions, by force of this act shall be adjudged by the same justices before whom such person shall be convicted, to have one of his ears cut off. (2) And if the person or persons so offending have none ears, whereby they should receive such punishment as is before declared, that then he or they to be marked and burned in the cheek with an hot iron, having the letter *F.* whereby he or they may be known and taken for fray-makers and fighters; (3) and

besides that, every such person to be and stand *ipso facto* excommunicated, as is aforesaid."

In the exposition of this act, says Mr. Serjeant *Hawkins*, it hath been holden: First, that notwithstanding the words of the statute be expressed, that he who smites another in the church-yard, &c. shall, *ipso facto*, be deemed excommunicate; yet there ought either to be a precedent conviction at law, which must be transmitted to the ordinary, or else the excommunication must be declared in the spiritual court upon a proper proof of the offence there; for it is implied in every penal law, that no one shall incur the penalty thereof, till he be found guilty upon a lawful trial; also it must be intended, in the construction of this statute, that the excommunication ought to appear judicially, for otherwise, there could be no absolution. 1 *Haw. P. C.* 139.

Secondly, that he who strikes another in a church, &c. can no way excuse himself, by shewing that the other assaulted him. 1 *Hawk. P. C.* 139.

Thirdly, that Churchwardens, or perhaps private persons, who whip boys for playing in the church, or pull off the hats of those who obstinately refuse to take them off themselves, or gently lay their hands on those who disturb the performance of any part of divine service, and turn them out of the church, are not within the meaning of the statute. 1 *Hawk.* 139.

Mr. Serjeant *Hewitt* shewed cause against a prohibition, which Mr. Serjeant *Pool* had moved for, (on the 6th of *July* last) to be directed to the archdeacon of *Nottingham*, to stay his proceedings in a suit against Mr. *Wilson*, parson of *Newark*, for *brawling* in the church, and also for *smiting* in the church: But he prayed the prohibition, only as to the latter charge, the *smiting* in the church. *V. 5, 6 E. 6. c. 4. f. 2.* Which act contains three distinct clauses, levelled against three distinct offences committed in churches and churchyards; viz. the 1st against quarrelling, chiding, or brawling by words only; the 2d against smiting, or laying violent hands; the 3d against striking with a weapon, or drawing one with intent to strike. His objection was, That as to *this* offence of *smiting* in the church, there ought to have been a *previous* CONVICTION AT LAW; though the statute says, "That he shall *ipso facto* be deemed excommunicate." In proof of which he cited *Cro. Eliz.* 224. *pl. 6. Dethick's* case. Where he was indicted, upon this statute of 5, 6 *E. 6.* for striking in *St. Paul's* church-yard: Though he got off indeed for want of being named *Garter*. 1 *Vent.* 146. The case of *Dyer v. East*, is full in point, "That the striker in a church-yard does not stand *ipso facto* excommunicated, UNTIL he be there- of convicted at law, and this transmitted to the ordinary."

Prohibition to the spiritual

stay proceedings on 5 & 6 Ed. 6. c. 4.

f. 2. which act contains three distinct clauses levelled against three distinct offences in churches and church-yards, viz. 1st, quarrelling, chiding, or brawling by words

only; 2dly, smiting or laying violent hands; 3dly,

offender is *ipso facto* to be deemed excommunicate. 1st, The ecclesiastical court may proceed upon the two first clauses, and are not to be prohibited; but upon the third clause there must be a previous conviction, and a transmission of the sentence, and a declaration; but if they proceed for damages, on either clause they shall be prohibited.

striking with a weapon, or drawing one with intent to strike; for which second offence, the offender is *ipso facto* to be deemed excommunicate. 1st, The ecclesiastical court may proceed upon the two first clauses, and are not to be prohibited; but upon the third clause there must be a previous conviction, and a transmission of the sentence, and a declaration; but if they proceed for damages, on either clause they shall be prohibited. 1 *Bur. Rep.* 240. *Hil. 30 Geo. 2. Wilson, clerk, v. Greaves.*

And here having been *no previous conviction* at law, he prayed a prohibition *quoad the smiting*: And obtained a rule to shew cause.

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Against which rule, Mr. Serjeant *Hewitt* (on Monday 7th of February 1757) shewed cause, as follows: In 5 & 6 E. 6. c. 4. there are three sections, and three different offences: And this offence charged in the libel is not an offence constituted so by this act; but was a matter within the jurisdiction of the spiritual court, before that act, and *abstractedly* from it. They have, without dispute, jurisdiction as to the *brawling*. And as to the second branch, for *smiting in the church*, there needs not be a previous conviction at *common law*: It is enough, if the excommunication be in the *spiritual court*. To prove which, he cited *Hetley* 86. The case of *Viner v. Eaton*, Cro. Jac. 462. The case of *Large v. Alton*, pl. 7. Cro. Eliz. 680. The case of *Baker v. Brent and Robinjon*. 1 Hawk. P. C. fo. 139. c. 63. sect. 27. 2 Lord Raym. 850. The case of *Wenmouth v. Collins*. The court denied a prohibition; because this offence was originally, and before this statute, conusable in the ecclesiastical court, *ratione loci*; and that the statute, though it provides a penalty, does not alter the jurisdiction. Therefore he concluded, that notwithstanding *this* objection, the spiritual court *have* jurisdiction. It was then adjourned to the next day; when it proceeded, and was determined. Mr. Justice *Foster* and Mr. Justice *Wilnot* were both absent. Mr. Serjeant *Pool*—I cited 1 Ventr. 146. *Dyer v. East*, as a case in point, That there *must be* a previous conviction by a trial *at law*; And that such conviction must be *transmitted* to the spiritual court. Cro. Eliz. 224. *Delbick's* case: Where there was an indictment actually found and pleaded to. As to my brother *Hewitt's* cases—*Hetley* 86, *Viner* against *Eaton*, is a loose incomplete note; and gives no reason why the prohibition was denied. Cro. Jac. 462. *Large v. Alton* proves nothing at all to the present purpose: And it was for *brawling* only; In *which* case, I agree that no prohibition shall go. Cro. Eliz. 680. is indeed in the alternative, “After sentence, *or* due trial and conviction, and not before:” But that is only said by *Dodderidge*, then at the bar, in arguing for the defendant. *Wenmouth v. Collins* might be for a prohibition *generally*. Indeed a reason is given for denying the prohibition, *viz.* That the spiritual court originally had jurisdiction to hold plea for this matter before the act. But I deny that they had such *original* jurisdiction: And the act *gives them none*. This is a force *vi et armis*; an assault and beating: And the temporal courts will prohibit them from proceeding, upon it. Bro. Prohibition, pl. 14. and Bro. Consultation, 6. are express, That where a man sues in the spiritual court; and an action at common law lies for the same matter; a prohibition lies, and no consultation shall be granted. [These are both the same cases; *viz.* 22 E. 4. 20.] Mr. *Taylor White* spoke on the same side for Mr. *Wilson*. He even attempted to shew, that a prohibition would be reasonable as to the *brawling*: For that the fact stated could not come within the notion of *brawling*; as it was only speaking to a third person, to turn *Greaves* out of the church. As to the *striking*—The spiritual court had no jurisdiction *before* the statute; and the statute gives them none: They have only power to *pronounce the sentence* of excommunication; but *not* the power of *judging*. As to the case of *Wenmouth v. Collins*, It is but a loose note; and *Holt* was absent; and

and there might have been a confession. And there have been many indictments, he said, on this statute: And *this* method of conviction was the *ancient* method.

Lord Mansfield: The statute of 5, 6 Ed. 6. c. 4. has three degrees of offences, and three different punishments. And whatever jurisdiction the spiritual court might claim *before* the act, they are *now* proceeding *since* the act. Therefore it is not very material how the matter stood *before* the act. The punishment is given, by this act, to the ecclesiastical court: And the punishment is such as can only be executed by *the ordinary*. The case stated with regard to the first offence, is sufficiently a *brawling*, within the meaning of the act. The second offence is *SMITING in the church, or church-yard*. Now this is indeed *still* an offence at *common law*; And he *may* be indicted for it: But, besides this, he may, by this act, be *ipso facto* excommunicated. By whom? By the ordinary. Indeed the ordinary *may* use a conviction at law, as a *proof* of the fact. And the case in *Raym.* [2 Lord Raymond 850. *Wenmouth v. Collins*,] is a plain proof that the ecclesiastical court may proceed upon the two first clauses, and are not to be prohibited. But then there is a third offence, and a third punishment mentioned in the act of 5, 6 E. 6. c. 4. which has made all the confusion: This offence is maliciously striking with any weapon, in any church or church-yard, or drawing any weapon there, with intent to strike. For this third offence, the act inflicts a double punishment, one temporal; the other, spiritual: The temporal punishment is loss of an ear or marking in the cheek, *after conviction*; the spiritual is, And *besides* every such person to be and stand *ipso facto* excommunicated as is aforesaid. Here, indeed, there must be a *previous* conviction; and a transmission of the sentence; and a declaration. But on the second clause, no previous conviction is necessary: (though, if there is one, it may be used *as a proof* of the fact.) This libel is upon the first and *second* clauses: NOT upon the *third*. And the proceedings of the two courts being *diverso intuitu*, it is no objection to say, That a man will at this rate be *twice punished* for the *same* offence. And this is *common*, in many cases: For *We* proceed, to *punish*, *They* to *amend*. 'Tis clear that upon the two *FIRST* clauses, the ecclesiastical court HAS a jurisdiction. And the cases upon words do not apply to the present case. Mr. Justice Denison concurred: Their proceedings are *pro salute animæ*. Indeed if they proceed for *damages*, this court will prohibit them. And that was laid down by the court in the case of *Large v. Alton*, in *Cro. Jac.* 462. where the costs being given only *pro expensis litis*, the court would not prohibit them: But they declared that they would have done otherwise, if it had been *pro damnis*. And it is plain to me, that the case in 1 *Ventr.* 146. *Dyer v. East*, was really a determination upon the *third* clause of the act; and is a mistake: I suppose the words *with a weapon*, are *left out by mistake*. The reporter was then a young man. But however, this is the *only* case to be met with, to this purpose; and it must be a mistake, either in the state of the case, or in the opinion: For on the *second* clause, surely, we can not prohibit them; because they are exactly within the *words* of the statute, That if a person or persons shall *smite* or lay any violent hands up-

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on any other, either in any church or church-yards, they shall *ipso facto* be deemed excommunicate. *Per Cur.* viz. the only two judges now present, the rule was discharged.

**Stat. 17 Car. 2. c. 3.** [*A. D.* 1665. *Intituled*] “An act for uniting churches in cities and towns corporate.”

Farther provided for by  
4 & 5 W. &  
M. c. 12.

In what cities  
and towns,  
and how  
churches and  
chapels may  
be united.

“Forasmuch as the settled provision for ministers, in most cities and towns corporate within this realm, is not sufficient for the maintenance of able ministers fit for such places, whereby mean and stipendiary preachers are entertained, to serve the cures there; who wholly depending for their maintenance upon the good-will and liking of their auditors, have been, and are hereby under temptation of too much complying, and suiting their doctrine and teaching to the humour rather than good of their auditors, which hath been a great occasion of faction and schism, and of the contempt of the ministry: (2) The lords and commons in parliament assembled, being deeply sensible of the ill consequence thereof, and piously desiring able ministers in such places, and a competent settled maintenance for them by the union of churches; which is also become necessary, by reason of the great ruin of many churches and parishes in the late ill times, and otherwise; do therefore most humbly beseech your most excellent majesty, That it may be enacted; (3) and Be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That in every city or town corporate and their liberties, within the kingdom of *England*, and dominion of *Wales*, which have a mayor and aldermen, and particular justices of the peace by charter or commission, or bailiff or bailiffs, or other chief officer or officers, and other assistants by like charter; and where two or more churches or chapels, or a church and a chapel, and the parishes thereunto belonging, do lie within the said corporation, or liberties thereof, convenient to be united: In such cases the bishop of the diocese where such parish and parishes are, with the consent of the mayor, aldermen, and justices of the peace, bailiff or bailiffs or other chief officer or officers, or the major part of them, and of the patron and patrons of such church or churches, chapel or chapels, shall or may according to due form of law unite the said churches or chapels, or church and chapel, or any of them; (4) and shall appoint at which church or chapel, churches or chapels the said parishioners and inhabitants of the said parishes or places to which the said churches or chapels, or church and chapel do belong, shall usually meet for the worship of God, and which of the said churches or chapels, or church or chapel shall be united and annexed unto the other, which shall be the church presentative, unto which all presentations shall hereafter be only made, and unto which the parishioners shall resort as their proper church; (5) and after such order made, the said churches or chapels, or church and chapel shall accordingly for ever stand united: And the parishioners, landholders, and inhabitants of the said parishes and places belonging

Mod. Cases in  
Law 5, 6.

belonging to such churches or chapels, or church and chapel so united and annexed, shall as they, or any of them become void, and from thenceforward, pay all such tithes and other duties as belong, or did belong to the incumbent of any of the said churches or chapels, or church and chapel so united and annexed, unto the incumbent of the said presentative church or chapel, unto which the said other churches or chapels, or church or chapel shall be so united and annexed."

*Seet. 2.* "And it is hereby also enacted, That notwithstanding any such union to be made by virtue hereof, each of the parishes so united, shall continue distinct, as to all rates, taxes, parochial rites, charges and duties, and all other privileges, liberties and respects whatsoever, other than what is herein before-mentioned and specified; and church-wardens shall be elected and appointed for each parish, as they were before such union made."

Parishes shall remain distinct notwithstanding such union of churches. Carthew 238.

*Seet. 3.* "And be it further enacted and provided, That where one or more of the said churches or chapels, or church and chapel so united and annexed, shall be full at the time of making such union, that then the said union shall take effect for every such church or chapel, upon the first avoidance after such union made: (2) And that the several patrons of the said churches and chapels so united, shall and may present by turns to that church only which shall remain and be presentative from time to time, in such order as the said bishop, with the consent of the said mayor, aldermen, and justices of peace, bailiff or bailiffs, or other chief officer or officers within such parishes, or the major part of them, and of the patron or patrons of such church or churches, chapel or chapels, shall determine and decree for the preservation of their respective rights therein, respect being therein had to the differences of the values of the yearly maintenance belonging to such churches or chapels, or any of them; (3) saving unto the king's majesty, his heirs and successors, all the tenths and first-fruits of all such churches and chapels so to be united, according to the rates and valuations at which the said churches and chapels are rated and valued in the office of first-fruits and tenths, in his majesty's court of exchequer; and also reserving all procurations and pensions to all persons to whom they are now, and have been formerly, or shall be hereafter due and payable; any thing herein contained notwithstanding."

How and when such uniting shall take effect.

And how several patrons shall present. Dr. & Stud. 116. b.

*Seet. 4.* "Provided always, That no union of parishes or places to be made by virtue of this act shall commence or be effectual in law, until it be registered in the register-book of the bishop of the diocese, which the register is hereby required to do."

How unions must be registered.

*Seet. 5.* "Provided always, That no union made by virtue hereof shall be good and effectual where the settled maintenance belonging to the parsons, vicars and incumbents of the church or chapel, or churches or chapels so united, shall exceed the sum of one hundred pounds *per annum* clear, and above all charges and reprises, unless the respective parishioners, or the major part of them, under their hands desire otherwise."

Parishes having 100 l. maintenance, may not be united.

*Seet.*



Incumbents of  
such united  
parishes must  
be graduates of  
the university.

*Seet. 6.* " Provided always, and be it enacted, That every minister settled, as aforesaid, the incumbent of any church or chapel, or churches and chapels united according to this act, shall be the full and lawful incumbent thereof to all intents and purposes, so as such minister be a graduate in one of the universities of this kingdom."

Owners of im-  
propriations  
may bestow  
and annex  
maintenance  
to the churches  
where they lie.

*Seet. 7.* " And be it further enacted by the authority aforesaid, That every owner or proprietor, owners or proprietors of any impropriation, tithes, or portion of tithes, in any parish or chapel within the kingdom of *England*, or dominion of *Wales*, is, are and shall be, by virtue of this act, enabled and empowered to give or bestow, unite and annex the same, or any part thereof, unto the parsonage or vicarage of the said parish-church or chapel where the same do lie, or arise, or settle the same in trust for the benefit of the said parsonage or vicarage, or of the curate and curates there successively, where the parsonage is impropriate, and no vicar indowed according to his or their respective estates, without any licence of mortmain; any law or statute to the contrary notwithstanding."

Without li-  
cence of mort-  
main.

Parsons and  
vicars not ha-  
ving settled  
means of 100l.  
per annum,  
may purchase  
and annex  
lands or rents,  
without li-  
cence of mort-  
main.

*Seet. 8.* " And be it further enacted, That if the settled maintenance of such parsonage, vicarages, churches and chapels so united, or of any other parsonage or vicarage with cure in the kingdom of *England*, or dominion of *Wales*, shall not amount to the full sum of one hundred pounds *per annum*, clear and above all charges and reprises, That then it shall be lawful for the parson, vicar, and incumbent of the same, and his successors, to take, receive, and purchase to him and his successors, lands tenements, rents, tithes, or other hereditaments, without any licence of mortman; any law or statute to the contrary notwithstanding."

He who steals goods belonging to a parish church, may be indicted for stealing the goods of the parishioners; and it hath been adjudged, that he who takes off a shroud from a dead corps, may be indicted as having stolen it from him who was the owner thereof when it was put on, for a dead man can have no property. 1 *Hawk. P. C.* 94.

Church-wardens.

## Church-wardens.

**CHURCH-WARDENS**, (*ecclesiarum guardiani*) are officers yearly chosen, by the consent of the minister and parishioners, according to the custom of every several place, to look to the church, church-yard, and such things as belong to both, and to observe the behaviours of their parishioners for such faults as appertain to the jurisdiction or censure of the court ecclesiastical. These are a kind of corporation, enabled by law to sue for any thing belonging to their church, or poor of their parish. *Cowell.*

Church-wardens are officers instituted for the benefit and advantage of religion, whose chief duty it is to suppress all prophaneness and immorality, and to see that the publick worship be performed with due decency and reverence. But though they deal chiefly in matters relating to the church, yet are they every where treated of in our law books, as temporal persons, and are undoubtedly to be considered as a lay corporation vested with a temporal right in their offices, and a special property in the goods belonging to the church, which farther appears by the duties enjoined them by several acts of parliament herein after mentioned. 1 *New Abr.* 379.

In the ancient episcopal synods, the bishops were wont to summon divers credible persons out of every parish, to give information of, and to attest the disorders of clergy and people. These were called *testes synodales*, and were in after-times a kind of impanelled jury, consisting of two, three, or more persons in every parish, who were upon oath to present all hereticks and other irregular persons. *Ken. Par. Ant.* 649. And these in process of time became standing officers in several places, especially in great cities, and from hence were called synodsmen, and by corruption *sidesmen*. They are also sometimes called *questmen*, from the nature of their office, in making inquiry concerning offences. And these sidesmen or questmen are to be chosen yearly in *Easter-week*, by the minister and parishioners (if they can agree), otherwise to be appointed by the ordinary of the diocese. But for the most part, this whole office is now devolved upon the church-wardens, together with that other office which their name more properly importeth, of taking care of the church and the goods thereof, which they had of very ancient time. *Dr. Burn's Eccles. Law*, tit. *Church-wardens*.

By the common law, the right of choosing church-wardens belongs to the parishioners, who are to be at the charge of repairing the church, &c. and therefore it is but fitting that they should have it in their power to determine what persons are proper to be intrusted in these concerns; nor does any canon deprive them of this right; for though by custom the parishioners in some places choose one, and the parson another, yet this is by

Of the right  
and manner of  
choosing  
church-wardens.

by virtue of the custom, the validity of which, as of all other customs, must be determined in the king's temporal courts; nor can the archdeacon, or any others, who by virtue of their offices are to swear and admit them, controul any such election, for herein their offices are purely ministerial. 1 *New Abr.* 371. cites *Cro. Jac.* 532, 670. *Cro. Car.* 552. *Noy* 31, 139. 2 *Roll Abr.* 234. *Hard.* 379. *Raym.* 439.

And though by custom the rector or vicar may name one, yet where the vicar of St. Giles's in *Northampton* was under a deprivation for not taking the oaths to king *William* and queen *Mary*, and the church being vacant, the parishioners proceeded to the election of two church-wardens, and presented them to be sworn, but the register of the consistory court being a friend to the vicar, refusing to swear them, unless that person whom the late vicar approved were nominated one, a *mandamus* was granted. *Carth.* 118.

The parishioners are also judges of the fitness and qualifications of the persons they choose for that office, and therefore where to a *mandamus* to swear a church-warden chosen according to the custom, the archdeacon returned, that the person presented was a poor dairyman, who had no estate, and was *persona minus habilis & idonea* for that office; the court granted a peremptory *mandamus*. *Carth.* 393. *Comb.* 417. *S. C.* 1 *Salk.* 166. *S. C.* 5 *Mod.* 325. *S. C.*

But where a prohibition was granted *nisi* to the ecclesiastical court, where *J. S.* sued as church-warden of *Ec.* in *Colchester*, on a suggestion, that in *Colchester* there is a custom for the inhabitants to elect the church-wardens, and that *A.* and *B.* were duly elected, which matter the defendant had pleaded in the spiritual court, but the plea was refused; but it appearing that *J. S.* was church-warden *de facto*, chosen by the parson, and that he all the year acted as such, and that he, with the inhabitants and another church-warden made the tax for which the defendant was sued in the ecclesiastical court, the rule for a prohibition was discharged; for *per cur.* Where the question is only, who is church-warden, if such custom is alledged, a prohibition shall be granted; but the matter here is for a tax for the repair of the church, and it is not material now, whether he was duly elected or not; it is sufficient that he was guardian *de facto*; and it may be as well put in issue, whether the minister was a rightful minister; besides, this tax is not rated by the church-wardens, for they have no such power, but it is a common charge, imposed by the major part of the parishioners, and the church-wardens do no more in assessing them than the other parishioners, and the tax will be well assessed by the major part of the inhabitants though the church-wardens are against it; their chief business is in collecting of it, and the matter is a matter of ecclesiastical cognizance, for the spiritual judge may inquire touching the want of reparation of the church. And *note*, that upon the rule for discharging the prohibition, all this matter was ordered to be entered, for fear it should be afterwards thought, that a prohibition was decreed where a custom was in question. 3 *Keb.* 533, 542.

In an action for a false return, a special verdict found the custom to be for the parishioners of      annually to elect a church-warden; that S. the plaintiff was elected by the parishioners to serve for church-warden for the year 1734. and until another be chosen; that at a vestry the ensuing year, he was re-elected by the parishioners, but at the vestry then holden, the vicar and one church-warden adjourned the vestry to the next day, and the vicar then chose *Chapman*. A *mandamus* had been directed to      to admit and swear in the plaintiff. It was argued for the plaintiff, that the eighty-ninth canon of 1603. that all church-wardens and questmen shall be chosen by the joint choice of the minister and parish, if it may be, if not, then the minister to choose one, and the parish the other, has never been received as law; and cited *Cro. Jac.* 532. *Warner's case*. *Cro. Car.* 551. *Hard.* 378. and *Carth.* 118. where *Holt* chief justice says, that where the incumbent chooses one, it is only by usage; and that a church-warden is a temporal officer. *Per Lee* justice. In all councils and elections the general rule is, that the major part binds, and cited 18 *E. 4.* 2. and *Hackwell's Modus tenendi Parliament.* The chief justice said, that the question is, whether the adjourning by vicar jointly with one church-warden was a valid and a good adjournment; and he thought not; and that if vicar and church-wardens had such a power, it must be by custom or by rule of common law; but no custom is found, nor is there any rule of common law to vest this power in the vicar, nor is it in the power of the church-warden to adjourn; and then the right is in the assembly itself. *Per Probyn* justice: The vicar is not a necessary party at the vestry; and judgment for the plaintiff *per tot' cur'*. *Trin.* 1736. in *B. R.* 4 *Vin.* 528.

By *Can.* 89. all church-wardens or questmen in every parish, shall be chosen by the joint consent of the minister and the parishioners, if it may be; but if they cannot agree upon such a choice, then the minister shall choose one, and the parishioners another: And without such a joint or several choice, none shall take upon them to be church-wardens.

*Warner*, one of the church-wardens of *Allbaldwins* in *London*, prayed a prohibition; for that, whereas by the custom of the parish, the parishioners every year used to elect one of the parish, who had born the office of scavenger, sidefman, or constable, to be church-warden; and that every year one who had been so elected church-warden, was to continue a year longer; and to be the upper church-warden, and another was to be chosen to him, who is called the under church-warden; that such a choice being made in that parish of the said *Warner* to be church-warden, the parson notwithstanding that election nominated one *Carter* to be church-warden, and procured him to be sworn in the ecclesiastical court, to be church-warden, and denied the said *Warner* to be church-warden according to the election of the parishioners; and this by colour of the late canon, that the parson should have the election of one of the church-wardens; and this being against the custom, a prohibition was prayed, and a precedent shewn in the common bench, *E. 5 Jac.* for the parishioners of *Walbrook* in *London*, where such a prohibition was granted; for it being a special custom,

the canons cannot alter it, especially in *London*, where the parson and church-warden are a corporation, to purchase and demise their lands; if every parson might have election of one church-warden, without the assent of the parishioners, they might be much prejudiced thereby. *Cro. Car.* 532. *East.* 17 *Jac.* 1. *Warner's case*.

But although the greatest part of the parishes in *London* choose the church-wardens by custom; yet in all the new erected parishes the canon shall take place (unless the act of parliament, in virtue of which any church was erected, shall have specially provided that the parishioners shall choose both;) in so much as no custom can be pleaded in such new parishes. *Gibf.* 215.

Where custom in choosing church-wardens cannot take place, they must resort to the canon.  
1 *Stran.* 145  
*Hil* 5 *Geo.* 1.  
*Catten v.*  
*Berwick.*  
At a court of delegates in Serjeants Inn Fleet-street,  
27 Feb. 1718.

The custom was, for the parson to appoint one, and the two old church-wardens the other. But it went no further. In this case the church-wardens could not agree, so the one presents *Barwick*, and the parishioners at large choose *Catten*. It was insisted for *Barwick*, that his case was like that of coparceners, where, if they disagree, the ordinary may admit the presentee of which he will, except the eldest alone presents. On the other side it was said, that the cases widely differed; for in the case of a presentation, the ordinary hath a power to refuse, but he hath not so in the case of church-wardens, for they are a corporation at common law, and more temporal than spiritual officers: And a case was cited to have been adjudged in the King's Bench, where to a *mandamus* to swear in a church-warden, the ordinary returned that he was a very unfit person; but a peremptory *mandamus* was granted, because the ordinary was not a judge in that case. And the court held, that by this disagreement the custom was laid out of the case; and then they must resort to the canon: Under which, *Catten* being duly elected, they decreed for him, with 60*l.* costs.

In some cases the lord of a manor prescribeth for the appointment of church-wardens: And this shall not be tried in the ecclesiastical court, although it be a prescription of what appertains to a spiritual thing. *God.* 153.

Ordinary has no jurisdiction to choose church-wardens, though the parishioners and parson should neglect it. 1 *Stran.* 52. *East.* 3 *Geo.* 1. *Stutter v.* *Freston.*

Prohibition was granted in the spiritual court, where it was libelled against the defendant, for not appearing to take upon him the office of church-warden, though thereunto appointed by the ordinary. And it was held, that although the parishioners and parson neglect for ever so long to choose church-wardens, yet the ordinary hath no jurisdiction; for church-wardens were a corporation at common law, and they are different from the questmen who were the creatures of the reformation, and came in by the canon law. The canons say, that church-wardens shall be chosen by the parson and parishioners; and if they disagree, then one by the parson, and the other by the parishioners; and otherwise they shall not be. By the court, The proper way is, to take a *mandamus* out of the King's Bench.

Who are exempted from being church-wardens.

All *peers* of the realm, by reason of their dignity, are exempt from the office of church-wardens. *Gibf.* 215. So are all *clergymen*, by reason of their order. *Id.* In like manner all *parliament men*, by reason of their privilege. *Id.*

If an attorney of the King's Bench be made a church-warden of a parish, he shall have a writ of privilege out of the King's Bench, shewing his privilege to be discharged thereof, by reason of his attendance in the said court. *Felix Wilson* being an attorney of the King's Bench, was made church-warden of *Hanwell*, and he refused, and was sued in the spiritual court to take upon him the office, and a prohibition was granted. So in like manner, *Mr. Baker* being chosen church-warden of *Aldermanbury*, in *London*, such writ was granted. 2 *Roll. Abr.* 272. *East.* 14 *Car.* 1. and *Trin.* 15 *Car.* 1.

*Stampe*, clerk of the King's Bench, was chosen church-warden of *Kingston*, and had a writ of privilege to the spiritual court, requiring them not to compel him to take the oath; which writ being disobeyed, he had a prohibition. 1 *Roll. Abr.* 368.

By *stat. 6 Will. 3. c. 4.* Apothecaries who have served seven years, shall be exempted from the office of church-warden. And by the *stat. 18 Geo. 2. c. 15.* Freemen of the corporation of surgeons in *London* are exempted from being church-wardens.

By *stat. 1 Will. 3. c. 18.* dissenting teachers or preachers, in holy orders, or pretended holy orders, being duly qualified, are exempted from the office of church-wardens: And by the same act other dissenters, scrupling to take upon them the office, may execute the same by a sufficient deputy, to be approved of in like manner as other church-wardens.

By *stat. 10 & 11 Will. 3. c. 23. sect. 2.* All persons who have prosecuted a felon to conviction, are exempted from the office of church-warden, in the parish where the offence was committed.

The church-wardens, when chosen, are a corporation intrusted with the care and management of the goods belonging to the church, which they are to order for the best advantage of the parishioners; they are likewise enabled to take goods for the benefit of the church, but cannot dispose of them without the parishioners. 1 *Roll. Abr.* 393. 2 *Inst.* 492. 1 *Roll. Rep.* 67. *Yelv.* 173.

Of their interest in, and power over the things belonging to the church.

They have such a special property in the organ, bells, parish-books, bible, chalice, surplice, &c. belonging to the church, that for the taking away, or for any damage done any of them, they may bring an action at law, and therefore the parson cannot sue for them in the spiritual court. 1 *New Abr.* 372.

If two church-wardens sue in the spiritual court for a levy towards the reparation of their church, and have sentence to recover, and costs assessed, and after one of them releases, yet the other may proceed for the costs, &c. for church-wardens have nothing but to the use of the parish, and the corporation consists of both; and one only cannot release or give away the goods of the church. *Cro. Jac.* 235. *Yelv.* 173. 2 *Brownl.* 215. *S. C.*

Also they have such a special property in the goods of the church, that when they are stolen, they may bring an appeal of robbery for them: They may also sue the offenders in the spiritual court, *pro salute anime*, but not to recover damages. 2 *Hawk. P. C.* 167.

But the church-wardens have no right to, or interest in the freehold and inheritance of the church, which alone belongs to the parson or incumbent. *Comp. Incumb.* 381.

Also the seats in the church being fixed in the freehold, the church-wardens cannot dispose of them alone, nor can the church-wardens and rectors jointly dispose of them without the consent of the ordinary; and though such dispositions have been made, yet it has been always presumed that it was so done with the consent and approbation of the ordinary. See 12 Co. 105. *Heil.* 94. *Godb.* 200. 2 *Bulst.* 150. *Hob.* 69. *Moor* 878. *Comp. Incumb.* 11 *Salk.* 167.

But as seats are erected for the more convenient attending of divine service, and as the parishioners are at the expence of erecting them, and keeping them in repair, if any of them be taken away, though they are fixed to the freehold, yet the church-wardens, and not the parson, shall bring the action against the wrong-doer. *Comp. Incumb.* 382.

It is said to have been holden, that at common law a church-warden may maintain an action upon the case for defacing a monument in the church. *Gold.* 279.

The church-wardens have no power to make any rate themselves, exclusive of the parishioners, their duty being only to summon the parishioners, who are to meet for that purpose, and when they are assembled, a rate made by the majority present shall bind the whole parish, although the church-wardens voted against it. See *Comp. Incumb.* 389.

Of their power and duty in making rates and presentments, and hindering irreverence in the church, and their power in several other matters.

But if the church-wardens give the parishioners due notice, that they intend to meet for that purpose, and the parishioners refuse to come, or being assembled refuse to make any rate, they may make one without their concurrence; for as they are liable to be punished in the ecclesiastical courts for not repairing the church, it would be unreasonable that they should suffer by the wilfulness and obstinacy of others. 1 *Vent.* 367. 1 *Mod.* 79, 194.

The church-wardens in summoning the parishioners need not to do it from house to house, but a general public summons at the church is sufficient, and the major part of them that appear upon such summons, will bind the whole parish. 1 *Vent.* 367. *Comp. Incumb.* 389.

On a motion for a prohibition, it appeared, that the libel recited that the dean of, &c. had presented that the church and chancel of D. was out of repair, &c. and that the church-wardens of the said parish did make, or cause to be made, a certain rate upon the inhabitants thereof, towards the charge of repairing the said church and chancel; and that the church-wardens had accordingly repaired the church and chancel, and beautified the same with ornaments, and that H. was a parishioner of the said parish, and refused to pay his proportion of the said rate; and it being objected, *first*, That the church-wardens only could not make a rate; *secondly*, That the parson alone ought to repair the chancel; a prohibition was granted generally, though it was strongly insisted on that the prohibition ought to go *quoad* the rate for the repairs of the chancel only. *Carth.* 360. 1 *Salk.* 365. *Comb.* 344. 5 *Mod.* 384. S. C.

Presentments made by church-wardens relate to the church, the parson and

and parishioners in which they are to be guided by the articles delivered them, but these articles must be agreeable to the laws of the church, and particularly to the canons made and agreed on in the year 1603. They need not take a particular oath upon all the presentments they make, but may do it by virtue of their oath of church-wardens. *Cro. Car.* 291. 1 *Vent.* 114. 2 *Vent.* 42.

The oath is to be general, viz. to do all things which appertain to their office; and therefore, if the oath tendered requires them to present matters not presentable by law, they are not obliged to take it, nor are they to be required to present or accuse themselves. *Hard.* 364.

Also if the ecclesiastical court proceeds against the church-wardens in matters not within their jurisdiction, an action on the case lies against them. *Hard.* 264.

And if the church-wardens maliciously present an innocent person for any crime, by which he is put to expence, or suffers in his good name or reputation, an action on the case lies. *Cro. Car.* 285. 1 *Sid.* 463. 1 *Vent.* 86.

In assault and battery against a church-warden, he justified that the plaintiff was at church in time of prayers, with his hat on, and that he demanded of him to pull it off, and because he did not do it, the church-warden took off his hat, and laid it by him; and the court held this a good justification, and that church-wardens may justify to wake a man, to switch boys that are at play, and turn an excommunicated person out of the church. 1 *Lev.* 196.

Church-wardens may restrain and hinder any stranger not licensed, from preaching in their church or chapel. *Compl. Incumb.* 335. See 2 *Bulst.* 49.

Every church-warden is also an *overseer of the poor*; by the statute of the 43 *El.* 2.

The church-wardens, or the constables, shall levy the penalty for keeping an unlicensed *alehouse*; by the 3 *C. c.* 3.

They shall receive the penalties, for hawking *spirituous, liquors*; by the 9 *Geo.* 2. *c.* 23.

They (or the overseers of the poor) shall levy the penalty for selling *corn* by wrong measure; by the 22 *C.* 2. *c.* 8.

They, and the overseers of the poor, shall distribute amongst the poor, foreign cattle imported, forfeited, and killed; by the 32 *C.* 2. *c.* 2.

They, or the overseers of the poor, shall levy the penalties relating to *weights and measures*; by the 16 *C.* 2. *c.* 19. and 22 *C.* 2. *c.* 8.

They shall carry hawkers and pedlars trading without licence, before a justice of the peace; by 9 & 10 *W.* 3. *c.* 27.

They, or the overseers of the poor, shall pay to the high constable the general *county rate*, out of their money collected for the poor; by the 12 *G.* 2. *c.* 29.

They shall receive the penalties for *servants carelessly firing houses*; by the 6 *Ann.* *c.* 31.

They



## Church-Wardens.

They shall receive the penalties for *tracking bares in the snow*, and other game penalties; by the respective game acts.

They shall join with the constable and surveyor of the highways, in choosing and returning new surveyors. *Stat. 3 W. & M. c. 12.* See *Stat. 7 Geo. 3. c. 42.*

Two church-wardens sue in the spiritual court, for a levy towards the reparation of their church, and had a sentence to recover, and costs assessed, the one releaseth, and the other sues for the costs, and there this release was pleaded, and disallowed. Whereupon he prays a prohibition; and all this matter was disclosed in the prohibition, and the defendant thereupon demurred in law. And now it was moved, that this release by the one, being in the personalty, should discharge the intire. But it was resolved by all the court to the contrary; for church-wardens have nothing but to the use of the parish, and therefore the corporation consists in the church-wardens; and the one solely cannot release, nor give away the goods of the church, and the costs are of the same nature, which the one without the other cannot discharge. And of that opinion was all the court of *King's Bench*, wherefore it was adjudged for the defendant. *Cro. Ja.*

234.

Of their accounts, and of actions brought by and against them.

By *Can. 89.* "All church-wardens at the end of their year, or within a month after at the most, shall before the minister and the parishioners give up a just account of such money as they have received, and also what particular they have bestowed in reparation, and otherwise for the use of the church. And last of all, going out of their office, they shall truly deliver up to the parishioners whatsoever money, or other things of right belonging to the church or parish, which remaineth in their hands, that it may be delivered over by them, to the next church-wardens, by bill indented."

*A just account*] If the custom of the parish is, for a certain number of persons to have the government thereof, and the account is given up to them; the custom is good of law, and the account given to them is a good account. *Gibf. 216.*

*By bill indented*] *Lindwood*, speaking of the inventory of the goods of the church, to be delivered in writing to the archdeacon, says, it were good that these writings should be indented, so that one part might remain with the archdeacon, and the other with the parishioners; from whence this branch of this present canon seemeth to have been taken. *Gibf. 216.*

If money be disbursed by church-wardens for repairing the church, or any thing else merely ecclesiastical, the spiritual courts shall allow their accounts. But if there be any thing else that is an agreement between the parishioners, the succeeding church-wardens may have an action of account at law, and the spiritual court in such case hath not jurisdiction. *12 Mod. 9.*

If the church-wardens, by the consent and agreement of the parishioners, take a ruinous bell and deliver it to a bell-founder; and that he by their agreement shall have for the casting thereof 4*l.* and shall retain it till the 4*l.* be paid; this agreement of the parishioners shall excuse the church-wardens,

wardens, in a writ of account brought against them by their successors. *1 Rol. Abr. 121. pl. 9.*

If the church-wardens and parishioners make an assessment, and the church-wardens lay out the whole money; but before the whole is collected their time is expired; and new church-wardens are chosen, the former church-wardens, by having presented such parishioners as refused to pay before the determination of their time, may still proceed against them; otherwise the new church-wardens must collect such arrears, and reimburse their predecessors. See *Prec. in Chan. 42. 2 Ven. 262.*

If goods belonging to the church are taken away, and the church-wardens for the time being neglect to bring an action, the succeeding church-wardens may, by virtue of their office, bring an action against the wrong-doer, but they must declare *ad damnum parochianorum*, and not *ipsorum*, though the old church-wardens, in whose time the fact was done, may lay it either way. *Cro. Eliz. 145, 179. 1 Leon. 177.*

If *A.* was church-warden of *B.* and at the end of the year gave up his accounts to his successor, and yet *A.* is falsely and maliciously cited by *D.* into the ecclesiastical court, to render an account, and at the request of *D.* he is excommunicated for not rendering up his account; an action lies against *D.*

If a church-warden in any case is maliciously sued in the spiritual court for not making up his account, and is excommunicated, when in fact it hath been duly made; he may have a prohibition: And also an action upon the case will lie. *Gibf. 216. Bunb. 247.*

Where church-wardens have passed their accounts at a vestry, the spiritual court shall not afterwards proceed against them to account upon oath. *Bunb. 289.*

The church-wardens were cited into the court of *Litchfield* to account. They pleaded, that they had accounted at the vestry, according to law; which was rejected; and a prohibition was granted. For the ordinary is not to take the account; he can only give a judgment that they do account; and to what purpose should they be sent back to those, who have taken their account already? *Str. 974.*

The spiritual court hath no jurisdiction to settle the church-wardens accounts. And a prohibition was granted, after sentence allowing the accounts, and an appeal to the arches. *Str. 1133.*

And if the church-wardens have laid out the parish money imprudently and improvidently; yet if it be truly and honestly laid out, they must be reimbursed again; and the parishioners can have no remedy herein, unless some fraud or deceit be proved against them; because the parish have made them their trustees. But if they be going on in an expensive way, the parishioners may complain to the ordinary, in order to give a check to them, or to procure (Dr. *Gibson* says) a removal of them from their office. *Gibf. 196.*

Adjudged, that the church-wardens *Prudence* and *Bond* could not cite the defendant *Dent* into the spiritual court, for non-payment of his church-rate,

rate, after their year was expired; for they can only sue in their politick capacity, and cannot institute any suit after that capacity is gone. It was agreed, that if the suit had been begun within their year, they might have proceeded in it after their year was out, this being of necessity to prevent people from delays in order to wear out the year; but in regard this suit was not commenced till the year was out, and no precedents were shewn to warrant this suit, the defendant *Dent* was dismissed. *Str.* 852.

If the church-wardens for the time being, neglect to bring an action for any of the goods of the church taken away; their successors may bring trespass for them, in respect of their office: but then the new church-wardens must say, to the damage of *the parishioners*, and not of *themselves*; tho' the old church-wardens, in whose time the goods were taken away, might say either. *Watf. c.* 39.

And if any of the goods of the church are detained, or not delivered by the predecessor; the successor hath an action against him also. *Gibf.* 216.

On a bill in chancery against ninety parishioners, by the executrix of one of the church-wardens of *Woodford*, to be reimbursed money laid out by the testator as church-warden, for rebuilding the steeple of the church; it was objected, that this matter was proper for the ecclesiastical court, and not for this court. But by *Harcourt* chancellor, The plaintiff is proper for relief in this court, and there are many precedents of the like nature. And it was decreed, that the parishioners should reimburse the plain'iff the money laid out by her testator, with costs of this suit, and that the money should be raised by a parish rate. *4 Vin. tit. Church-wardens.*

The church-wardens, as being a corporation for the goods of the parish, commenced a suit, with the consent and by order of the parish, concerning a charity for the poor: in which suit they miscarried. And then they brought a bill against the subsequent church-wardens, to be repaid the costs by them expended; and had a decree for it. It was proved, that from time to time the parish was made acquainted with what they did; and tho' there was no vestry by subscription, yet a vestry-book, kept for the parish acts was allowed as evidence of their consent. They are the trustees of the parish; and the parishioners ought to contribute, and not lay the burden upon those poor people the church-wardens. And the annual successive church-wardens need not to be made parties, as they are renewed. By the master of the Rolls. *4 Vin. tit. Church-wardens. C.*

By *stat. 11 Geo. 2. c. 26.* Church-wardens, &c. are required to carry hawkers of brandy, &c. before justices of peace.

By the *stat. 3 & 4 W. & M. c. 11.* In all actions to be brought in the courts of *Westminster*, or at the assises, for money mispent by church-wardens, the evidence of the parishioners, other than such as receive alms, shall be taken and admitted.

Church-wardens are comprehended within the purview of the statutes *7 Jac. 1. cap. 5.* and *21 Jac. 1. cap. 12.* as to pleading the general issue

to actions brought against them, and as to double costs when they have judgment.

But in action on the case against a church-warden for a false and malicious presentment, though there be judgment for him, yet he shall not have double costs; for the statute does not extend to spiritual affairs. *Cro. Car.* 285, 286.

## Clergy.

CLERGY, (*Clerus*) is diversly taken; sometimes for the whole number of those who are *de clero domini*; of our lord's lot or share, as the tribe of *Levi* was in *Judea*, sometimes for a plea to an indictment or an appeal, and is by *Staunford* (*Pl. Cor. lib. 2. c. 41.*) thus defined:—Clergy is an ancient liberty of the church, which hath been confirmed by divers parliaments, and is when a priest, or one in orders, is arraigned of felony before a secular judge, he may pray his *clergy*; which is as much as if he prayed to be delivered to his ordinary, to purge himself of the offence objected. And this might be done in case of murder. *Co. Lib. 4. fo. 46. a.*

Anciently, says lord *Hale*, princes and states converted to christianity, in favour of the clergy, and for their encouragement in their offices and employments, and that they might not be so much intangled in suits, did grant to the clergy very bountiful privileges and exemptions, principally of two kinds. 1. Exemption of places consecrated to religious duties from arrests for crimes, which was the original of sanctuaries. 2. Exemption of their persons from criminal proceedings in some case capital before secular judges, which was the true original of the *privilegium clericale*. 2 *Hale's Hist. P. C.* 323.

Original and alteration of the privilege of clergy.

The clergy increasing in wealth, power, honour, number, and interest, afterwards set up for themselves, and that which they obtained by the favour of princes and states at first, they now began to claim as their right, and a right of the highest nature, namely *jure divino*; and by their canons and constitutions endeavoured, and (where they met with tame and easy princes and states,) obtained vast extensions of these exemptions. 1. In the persons concerned, namely to all that had any kind of subordinate ministration relative to the church. 2. In the causes, exempting as far they could all causes of clergymen, as well civil as criminal, from the jurisdiction of the secular power, and wholly subordinating them immediately and only to the ecclesiastical jurisdiction, which they supposed to be lodged first in the pope by divine right and investiture from *Christ*, and from the pope shed abroad into all subordinate and ecclesiastical jurisdictions, whether ordinary or delegate. 2 *Hale's Hist.* 324.

And by this means they endeavoured, and in some kingdoms and for some ages obtained, that there was a double supreme power, or two

kingdoms in every kingdom, the one a *regnum ecclesiasticum*, absolute and independent upon any but the pope over ecclesiastical men and causes, exempt and separate from the secular magistrate; the other a *regnum seculare* of the king or civil magistrate, which yet was not so absolute, but that it had subordination and subjection to this *regnum ecclesiasticum*; so it was *regnum sub graviori regno*. He who is curious to see the whole scheme of their claim, let him read *Suarez* his large discourse of the *monumenta ecclesiastica* in his *Opuscula*. 2 *Hale's Hist.* 324.

But although the usurpations of the pope were very great, and obtained much in this kingdom, until the extermination of his pretended supremacy by king *Henry 8.* yet this claim of the exemption of the clergy totally from secular jurisdiction grew so burdensome and intolerable, that it was from time to time qualified and abridged by the civil power, sometimes by acts of parliament taking it away in some cases, sometimes by the interpretation and construction of the judges, and sometimes by the contrary usage of the kingdom; for ecclesiastical canons never bound in *England* farther than they were received, and so had not their authority from their own strength and obligation, but from the usages and customs of the kingdoms that admitted them, and only so far forth as they were so admitted. And therefore,

*First*, As to the exemption of the clergy from civil suits between party and party only, if upon the *distingas* he was returned *clericus & beneficiatus non habens laicum feodum*, process issued to the bishop to bring him in, and in case of a statute merchant they were by special acts exempted from arrests by *Capias*. But yet they were not exempted from the jurisdiction of civil courts in civil causes, yet anciently they attempted this also in the king's courts, but with ill success, so they never attempted it after, that I remember, says *Lord Hale*. 2 *Hale's Hist.* 325.

*M. 7 & 8 E. 1. B. R. Rot. 13. Cant. William Joye plaintiff* brought an action against *Guy Mortimer* rector of *Kingston*, for beating him and cutting of his upper lip with a knife; the defendant pleaded *quod ipse est clericus, & non debet hic respondere*; and that was all the answer he would give: *Et quia querela ista non tangit vitam & membrum, sed est de quadam transgressionem personali, nec ipse vult in curia domini regis respondere ad querelam istam*. Judgment was given for the plaintiff to recover 100*l.* damages taxed by the court, and the defendant was committed to gaol, and afterwards paid twenty marks to the king for a fine. 2 *Hale's Hist.* 325.

*Secondly*, If they were indicted in cases criminal, but not capital, nor wherein they were to lose life or limb, there *privilegium clericum* was not allowed them, and therefore not in indictments of trespass, petty larceny, or killing *se defendendo*. *Stamf. P. C. fol. 124. a.*

*Thirdly*, If they were indicted of high treason, clergy was not allowable, and therefore *Hill. 2 H. 4. Rot. 4. B. R. rex*, where the bishop of *Carlisle* was indicted of high treason, and insisted upon his *privilegium clericale, quia episcopus unctus*, yet this claim was disallowed, and he put upon his trial, and convicted.

Yet *Hill. 17 E. 2. Rot. 87. in dorso, Heref. coram rege*, the bishop of *Hereford* indicted of high treason for levying war against the king, alleged,

leged, that he was *episcopus Heref. ad voluntatem Dei & summi pontificis*, and could not answer *absque offensâ divina & sanctæ ecclesiæ*. Thereupon the plea was adjourned into parliament, where the bishop answered as before, and the archbishop of *Canterbury* claimed him and had him; thereupon it was ordered, that day should be given in the King's Bench to the bishop; and the archbishop was to have him there at the day, and in the mean time a writ issued to the sheriff of *Hereford*, to return twenty-four to inquire, as if he had pleaded, (*quod venire faciat tot & tales, &c. ad inquirendum prout moris est, &c. pro quali, &c.*) returnable at the same day; the bishop appeared accordingly in the custody of the archbishop, and the jury found him guilty, *Ideo considerat' est, quod prædictus episcopus tanquam convictus, &c. remaneat penes prædictum archiepiscopum ut prius, &c.* and all his goods and chattles, lands and tenements were seized into the king's hands by writ directed to the sheriff; upon which it is observable, 1st, That a kind of allowance is made of clergy in high treason. 2. That notwithstanding his claim of clergy, yet a writ issued to summon a jury, who inquired whether guilty or not. 3. That upon this plea and this inquisition, though he had his clergy, it was *ut clericus convictus*. 2 H. H. 327.

Note; in the parliament of the 1 E. 3. this judgment was reversed for this cause, that the justice took the inquisition, *licet idem episcopus in aliquam inquisitionem se non posuisset*. Claus. 1 E. 3. part. 1. M. 13. So that the judgment was given upon the inquisition, and not upon *nihil dicit* for standing mute, and therefore erroneous.

But afterwards T. 21 E. 3. Rot. 23. *Hertford, rex, John Gerberge* was indicted for a constructive treason, namely, accroaching royal power, and thereupon claimed the privilege of clergy, *Et quia privilegium clericale in hujusmodi casu seditionis secundum legem & consuetudinem regni hactenus obtentat & usitatas non est allocandum, &c. quæsitum est ab eo sæpius qualiter se velit acquietare*, he still replied, that he was a clerk; and thereupon he is committed to the marshal *ad penitentiam suam secundum legem & consuetudinem regni subiturum, &c.*

Note; clergy denied in such a treason, yet penance awarded, though the charge was treason.

Yet at common law before the statute of 25 E. 3. c. 4. *pro clero*, it seems that clergy was allowable to him, that was indicted for counterfeiting coin, or for counterfeiting money. B. Clergy 31. But that is altered by the statute of 25 E. 3. *pro clero*.

Fourthly, If clerks were indicted with these clauses, *insidiatores viarum, & depopulatores agrorum*, clergy was denied them, and therefore the act of 4 H. 4. cap. 2. was made to put these clauses out of indictments, and to allow clergy, if they were in the indictment.

Again, as it was denied in respect to some offences, so this *privilegium clericale* was by the common law abridged in respect of the person; for certainly by the canon laws Nuns had the exemption from temporal jurisdiction, but the privilege of clergy was never allowed them by our law. See stat. 21 Jac. c. 28. sect. 6 & 7.

Again, tho' the ordinary took himself to be the judge of the allowance of the clergy and of the purgation of the clerk, yet the king's courts took that courage to make the ordinary but a minister, and themselves judges

of the allowance and disallowance of the clergy and purgation. 21 E. 4. 21. b. 9 E. 4. 28. a.

And so the judges of the common law would oftentimes deliver the clerk to the ordinary, but *absque purgatione*, as where the clerk is attaint by outlawry, or by judgment, or convict by his own confession, or upon an appeal. *Stanf. P. C. lib. 2. cap. 49. 3 H. 7. 12. a. 10 E. 3. Coron. 247. Hob. Rep. 288. Searle & Williams*, or if he were a notorious malefactor, *vide 10 E. 3. Coron. 247.* or if he be convict by verdict of counterfeiting the seal or coin at common law before the statute of 25 E. 3. *Lib. 18 E. 1. Berton's case, (Ryley's plac. parl. p. 56.)* or if he be committed by record to the ordinary *absque purgatione. Hob. ubi supra.*

And in these cases, if the ordinary admitted him to his purgation, he was fineable for it as a great misdemeanor, and the party delivered by such purgation shall be again committed to prison. *M. 34 & 35 E. 1. Rot. 59. Kanc. B. R. the case of Hugh Forsham delivered by William Testa*, and another commissioned from the pope; and the entry in such cases is, *liberatur ordinario tanquam clericus convictus & utlegatus ad salvo custodiend' periculo, quod incumbit, &c. & inhibitur eidem ordinario, ne ad aliquam purgationem ipsius A. B. procedat domino rege inconsulto, eò quòd prædictus A. B. pro felonis, &c. utlegatus est, &c. H. 14 E. 3. B. R. Rot. 19. Rex. Suff. Lond.* The case of *John de Hemmyngeston* chaplain. But indeed, if the clerk had his clergy, and were generally delivered to the ordinary, he might admit him to make his purgation, and upon signification thereof by the ordinary into the chancery, a writ should issue to the sheriff to deliver unto the party so purged all his goods and chattles seized into the king's hands upon that occasion, *nisi fugam fecerit eà occasione. F. N. B. 66. a.* And all this is to shew, that whatsoever weight the clergymen laid upon their canons and their exemptions from the secular jurisdictions, yet their canons or constitutions, or pretensions or claims of this kind were not binding here, nor so taken farther, than either by acts of parliament or the common acceptation of the kingdom they were received, and therefore these privileges received divers alterations and corrections and restrictions by the temporal judges, as the occasion required. 2 H. Hist. 329.

In what offences clergy was allowed or not, before and by the Stat. 25 Ed. 3. c. 4.

In case of high treason against the king, clergy was never allowable in this kingdom. 2 Ha. H. P. C. 330.

The statute of 25 Ed. 3. *for the clergy*, was made in the parliament held in Hil. 25 Ed. 3. which was in the same parliament, wherein the statute of declaration of treason was made, commonly called the *Statute of purveyance. Id. ib.*

By this statute *pro clero, cap. 4.* it is enacted, "That all manner of clerks, as well secular as religious, which shall from henceforth be convict before secular judges, for any treasons or felonies touching other persons than the king himself or his royal majesty, shall from henceforth have and enjoy the privilege of holy church, and shall be without impeachment or delay delivered to the ordinaries demanding them, and upon this the archbishop promiseth, that upon the punishment and safe keeping of such clerks offenders, which shall be delivered to the ordinaries, he shall thereof

thereof make a convenient ordinance, whereby they shall be safely kept and duly punished, so that no clerk shall take courage to offend for default of correction."

At the same parliament it was declared what was treason, and amongst the rest, Counterfeiting the great or privy seal, or the king's coin, is declared treason, and put in the same rank with compassing the king's death, or levying of war, and it is thereby enacted, that no other offences, than what are therein declared, be treason, till declared by parliament. 2 H. H. P. C. 331.

Before this statute, there were two sorts of treasons, that concerned the king, one was of great note, and another of less note.

Those of the greater note were *conspiring the king's death, levying of war against the king, adhering to his enemies*, and two others, that are since abrogated by the statute of 25 Ed. 3. which came under the general and obscure names of *sedition*, and *accroaching of royal power*. 2 H. H. P. C. 331.

In any of these a party convicted had not his clergy at common law. This appears by the judgment, T. 21 Ed. 3. B. R. Rot. 23 Rex. *Ib. id.*

But there were other treasons, that concerned the king which were of an inferior note, namely *counterfeiting the seal* and *counterfeiting the coin*; these, the latter especially, had only judgment as in case of petit treason, namely, to be drawn and hanged. *Ib. id.*

And it seems before the statute of 25 Ed. 3. of *treasons*, clergy was allowed in both these cases, as appears by the old book of E. 3. B. R. tit. *Clergy, placito ultimo*, and the judgment in parliament of 18 Ed. 1. in *Borton's* case, who being convicted for counterfeiting the king's seal, had his clergy, but *tradatur ordinario sine purgatione*. *Id. ib.*

But now, as to the statute of 25 Ed. 3. *pro Clero*, and the statute of 25 Ed. 3. at the same parliament *de prodicionibus*, laying them both together in all cases of treason touching the king himself or his royal majesty, clergy is wholly taken away, and in all other cases of treason or felony, clergy is allowed; and consequently in murder, robbery, petit treason, clergy is restored and settled by this act of parliament. 2 H. H. P. C. 332.

But whatsoever is declared treason against the king by the statute of 25 Ed. 3. *de prodicionibus*, as well counterfeiting the seal or the money of the kingdom, as any other treason therein declared, is wholly exempted from clergy. 2 H. H. P. C. 332. cites 19 H. 6. 47. b. *Staunf. P. C. lib. 2. cap. 42. fol. 124. a. M.* 31 Ed. 3. *coram rege*, Rot. 18. Rex, in dorso, Bucks, *casus abbatis de Mussenden pro refecatione & falsificatione legalis monetæ*. 24 H. 8. *Spelman's Rep.* accordant adjudge. 2 Co. Inst 635, 636, *super artic. cleri*.

So that at this day, in all cases of high treason, whether those declared by the statute of 25 Ed. 3. *de prodicionibus*, or other treasons newly enacted since, the privilege of clergy is wholly taken away. 2 H. H. P. C. 332.

In



In all felonies, that were at common law, before the statute of 25 *Ed. 3. pro Clero*, and in all cases of petit treason by that statute, the privilege of clergy is restored.

And therefore in all such felonies and *petit* treasons, which were such at the time of the statute of 25 *Ed. 3. cap. 4. pro Clero*, clergy is allowable, unless in such cases where it is taken away by subsequent acts of parliament, and so far forth only as the same is so taken away. *Id. ib.*

But there seem to be two felonies, where clergy was not allowable notwithstanding this act, namely, certain acts that by interpretation of law were hostile acts, *viz.* 1. *Insidiatio viarum & depopulatio agrorum.* 2. Wilful burning of houses.

Concerning the former of these it appears, that *insidiatores viarum* and *depopulatores agrorum* were ousted of their clergy, notwithstanding the statute of 25 *Ed. 3. cap. 4. pro Clero.*

*Rot. parl. 4 H. 4. n. 3.* There was a complaint in parliament by the archbishop of *Canterbury* and clergy, whereupon it was enacted, that that general clause should be left out in indictments, and words of the same effect inserted; and that notwithstanding the indictment carried the same effect, yet benefit of clergy should not be denied, as appears at large by the statute of 4 *H. 4. cap. 2.*

As to wilful burning of houses, clergy was not allowable by the common law. 2 *H. H. P. C. 333.*

As to *sacrilege*, though some later statutes were made to oust clergy in that crime, yet it seems at common law, or at least after the statute of 25 *Ed. 3. c. 4. pro Clero*, it was allowable, as appears 26 *Affise* 27. where it is agreed by the justices, that a person indicted of robbing a chapel and breaking his church should have his clergy; but it seems, it was with this difference, that if the ordinary refused him, as he might, he should not have his clergy. 20 *Ed. 2. Coron. 283. Staunf. P. C. 123, 124.* But otherwise the court would allow it him. 26 *Affise* 27.

In what offences benefit of clergy is taken away by acts of parliament, subsequent to 25 *Ed. 3. c. 4.*

As to new felonies made by acts of parliament since 25 *Ed. 3.* this general rule holds, that if an act of parliament make a felony, and doth not take away clergy in express words, in all these cases, clergy is allowable. And if it doth make a felony and takes away clergy not generally, but in such or such cases, regularly in other cases clergy is allowable; as if it take away clergy in case the party be convicted by verdict, yet he shall have his clergy if he stand mute. 2 *Hale's Hist. P. C. 334, 335.*

But as to standing mute, this is in part remedied by 3 *W. c. 9. sect. 2.* which enacts, that if any person be *indicted* of any offence, for which by virtue of any former statute he is excluded from clergy if he had been convicted by verdict or confession, if he stand mute, or will not answer directly, or challenge peremptorily above twenty of the jury, or be outlawed, he shall not be admitted to his clergy. But this extends not to *appeals*, nor to offences made felonies by subsequent statutes. 2 *Haw. 348.*

But if the statute enacts generally, that it shall be felony without benefit of clergy, or that he shall suffer as in cases of felony without benefit

of clergy, this excludes it in all circumstances, and to all intents. 2 H. H. 335.

It follows farther, from what has been said, that in all cases where an act of parliament ousteth clergy, in case of any felony, the indictment must precisely bring the party within the case of the statute; otherwise, although possibly the fact itself be within the statute, and it may so appear upon the evidence, yet if it be not so alledged in the indictment, the party, though convict, shall have his clergy. 2 H. H. 336.

But although the case be so laid in the indictment, that it comes within the statute, to exempt the prisoner from clergy, yet if upon the evidence it fall out, that though it be a felony, yet it is not so qualified as laid in the indictment, the jury ought to find him guilty of the felony simply, but not so as to the matter laid in the indictment, and thereupon the prisoner shall be admitted to his clergy; and this is commonly done. 2 H. H. 336.

But if the offence was capital at common law, and a statute only excluded it from clergy, the indictment in such case need not *conclude against the form of the statute*, because the statute doth not alter the nature of the offence, but leaves it to its proper judgment, and only takes away a personal privilege of exemption from such judgment. 2 Haw. P. C. 342.

Furthermore, from what hath been observed above, it follows, that where an act taketh away clergy from the principal, and saith nothing of the accessory, the accessories, as well before as after, shall have their clergy. 11 Co. 37.

*For the several offences which have been excluded the benefit of clergy by acts of parliament made since 25 Ed. 3. c. 4. See title Felony.*

By a favourable interpretation of the statutes relating to the benefit of clergy, not only those actually admitted into some inferior order of the clergy, but also those who were never qualified to be admitted into orders (which was formerly tried by putting them to read a verse) have been taken to have a right to this privilege, as much as persons in holy orders. 2 Haw. 338.

What persons are or are not capable of clergy.

By the common law, a woman could not have the benefit of clergy: But now by the statute of 3 Will. & M. cap. 9. a woman convicted or outlawed for any felony, for which a man might have his clergy, shall upon praying the benefit of that statute, be subject only to such punishment as a man would be in the like case.

A person convicted of heresy, a jew or a turk, shall not have their clergy; but a person excommunicate shall have his clergy. 2 H. H. 373.

Also every person (not being within orders) who hath been once admitted to his clergy shall not be admitted to the same a second time. 4 H. 7. c. 13.

And if he is convicted of murder, he shall be marked (unless he is a peer, 2 H. H. 376) with an M. on the brawn of the left thumb; and if for any other felony with an F. by 4 H. 7. c. 13.

But he shall not be ousted of his clergy, by the bare mark in his hand, or by a parol averment, without the record testifying, or a transcript thereof, according to the following statutes. 2 H. H. 373.

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By stat. 34 & 35 *H. cap.* 14. The clerk of the crown, or of the peace, or of assize, shall certify a transcript briefly of the tenor of the indictment, outlawry, or conviction, and attainder, into the King's Bench in forty days: And the clerk of the crown, when the judges of assize, or justices of the peace write to him for the names of such persons, shall certify the same with the causes of the conviction or attainder.

Another method is given by the Stat. 3 *W. & M. c.* 9. *f.* 7. which enacts that the clerk of the crown, clerk of the peace, or clerk of assize, where a person admitted to clergy shall be convicted, shall at the request of the prosecutor, or any other on the king's behalf, certify a transcript briefly and in few words, containing the effect and tenor of the indictment and conviction, of his having the benefit of clergy, and the addition of the party, and the certainty of the felony and conviction, to the judges where such person shall be indicted for any subsequent offence.

Also it seems, that if the party denies that he is the same person, issue must be joined upon it, and it must be found upon trial that he is the same person, before he can be ousted of clergy. 2 *H. H.* 373.

At what time  
clergy is to be  
allowed, and  
the effect of  
allowing it.

By the ancient common law, the benefit of clergy was demanded as soon as the prisoner was brought to the bar, before any indictment or other proceeding against him; but this was found a great inconvenience to the prisoner, because possibly he might have been acquitted of the felony; or if not, yet in case of an inquest of office he lost his challenges to such inquest, and yet upon such inquest found, he forfeited his goods, and the profits of his lands; and therefore *Prifot* chief justice, with the advice of the other judges, in the reign of *Hen.* 6. for the safety of the innocent, would not allow the prisoner the benefit of clergy before he had pleaded to the felony, and (having the benefit of his challenges and other advantages) had been convicted thereof; which course hath been generally observed ever since. 2 *Inst.* 164. 2 *H. H.* 378.

And this benefit of clergy may be allowed by the court in discretion, though the party challenges it not. *Hale's Pl.* 239.

Persons admitted to their clergy, may be continued in prison, as a further punishment, not exceeding one year. 18 *Eliz. cap.* 7.

By stat. 4 *Geo.* 1. *cap.* 11. persons convicted of offences within benefit of clergy (except receivers and buyers of stolen goods) may, instead of being whipped and burnt in the hand, be transported for seven years.

A person admitted to his clergy, forfeits all his goods that he hath at the time of the conviction. 2 *H. H.* 388.

But presently, upon burning in the hand, he ought to be restored to the possession of his lands, and from thenceforth to enjoy the profits thereof. 2 *H. H.* 388.

Also it restores him to his credit; and consequently enables him to be a good witness. 2 *Haw.* 364.

And it is holden, that after a man is admitted to his clergy, it is actionable to call him felon; because his offence being pardoned by the statute, all the infamy and other consequences of it are discharged. 2 *Haw.* 365.

## Clerk of the Peace.

**C**LERK of the peace (*Clericus pacis*), is an officer belonging to the sessions of the peace. His duty is, in the sessions, to read the indictments, to enrol the acts, and draw the process: To record the proclamation of rates for servants wages, to enrol the discharge of apprentices, to keep the counterpart of the indentures of armour, to keep the register-book of licences given to badgers and laders of corn, and of those that are licensed to shoot in guns, and to certify into the King's Bench transcripts of indictments, outlawries, attainders, and convictions had before the justices of the peace, within the time limited by statute. *Lambard's Eiren. lib. 4. cap. 3. fol. 379.*

**Stat. 37 Hen. 8. c. 1.** [*A. D. 1545. intituled*] “A bill for *custos rotulorum* and the clerkship of the peace.”

“Where before this time the lord chancellor of *England* for the time being hath, by reason of his office of the chancellorship, the nomination and appointment of the *custos rotulorum* within all and every shire of this realm of *England* and *Wales*, and other the king's dominions, marches and territories of the same, (2) and that in like manner all and every person, which had and enjoyed the said office of the *custos rotulorum*, hath had, until now of late, the nomination and appointment of the clerk of the peace within such shires where he or they had and enjoyed the said office of the *custos rotulorum*: (3) And where now of late divers and sundry persons within this realm, being not learned, nor yet meet ne able for lack of knowledge and learning to occupy and exercise the said office of the *custos rotulorum*, and of the clerkship of the peace, have of late years by labour, friendship and means, attained and gotten for term of their lives, of the king's majesty, several grants by his highness letters patent to them made of the said clerkships of the peace; by reason whereof, and for that that the parties to whom the said several grants have been so made and granted, have not been sufficiently learned to exercise and occupy the same office and offices, many and sundry indictments, as well of felony, murder, and other offences and misdemeanors, and the process awarded upon the same indictments, have not only by reason thereof been made clearly frustrate and void, sometime by reason of the negligent ingrossing and keeping of the said indictments, and sometime by reason of the imbezilling or rasure of the same indictments, (4) but also divers and sundry bargains and sales of divers and sundry manors, lands and tenements had and made between party and party, have been made frustrate and void for lack of sufficient enrolment of the bargains and sales to be had and made, by the clerks of the peace, to the great hindrance of justice, and to the disinheritation of divers of the king's most loving subjects.

Who shall appoint the *custos rotulorum*, and clerk of the peace in every county. Inconveniences ensuing by the ignorance of the clerk of the peace.

The *custos rotulorum* shall be appointed in every county by bill signed with the king's own hand. Altered by 3 & 4 Ed. 6. c. 1. f. 3. 4 Mod. 167 1 Shower 430, 431.

*Seet.* 2. "For reformation whereof, to the intent that justice may be the better hereafter preferred, and that the same offices may hereafter be occupied and exercised by such persons learned in the laws of this realm, as shall be able to exercise and supply the same: (2) Be it enacted by the king our sovereign lord, with the assent of the lords spiritual and temporal, and of the commons, in this present parliament assembled, and by authority of the same, That no person or persons shall from henceforth be nominated and appointed to the said office and offices of the *custos rotulorum* within any shire of this realm of *England, Wales* and other the king's dominions, marches, or territories of the same, but such as shall have a bill signed with the king's hand for the same; (3) which bill signed shall be a sufficient warrant by the authority aforesaid, to the said lord chancellor of *England*, and the lord keeper of the great seal for the time being, to make from time to time commission or commissions, assigning and authorizing thereby the same person to be *custos rotulorum*, until the king hath, by another bill assigned with his own hand, appointed and ordained one other person to have, occupy and exercise the same office of the *custos rotulorum*, (4) and that the said person appointed and assigned to be *custos rotulorum*, as is aforesaid, shall and may occupy, exercise and enjoy the same office of the *custos rotulorum*, by himself, or by his sufficient deputy, learned in the laws of this realm, and meet and able to supply the said office according to the tenor of the said grant or commission.

The *custos rotulorum* shall appoint the clerk of the peace. Carthew 426.

*Seet.* 3. "And be it further enacted by the authority of this present parliament, That every *custos rotulorum* for the time being shall, at all times hereafter in every shire of this realm, *Wales*, and other the king's dominions, marches, and territories of the same, nominate, elect, appoint and assign all and every person and persons which hereafter shall be clerks of the peace within any of the said shires of this realm of *England, Wales*, and other the king's dominions, marches and territories of the same, (2) and to give and grant the said office and offices of the clerkship of the peace to such able person instructed in the laws of this realm, as shall be able to exercise and occupy the same, to hold and enjoy the same during the time that the said *custos rotulorum* shall occupy and exercise the aforesaid office of *custos rotulorum*; so that the said clerk demean him in the said office justly and honestly: (3) And that it be lawful to every such grantees of the said clerkship, to occupy and enjoy the same office of the clerkship of the peace, by himself, or by his sufficient deputy instructed in the laws of this realm, so that the same deputy be admitted, taken and reputed by the said *custos rotulorum*, to be sufficient and able to exercise, occupy, keep and enjoy the same office of the clerkship of the peace."

The clerk of the peace may make a deputy by the assent of the *custos rotulorum*.

*Seet.* 4. "Provided alway, and be it enacted by the authority aforesaid, That all such as now have any of the said offices of *custos rotulorum*, or clerkship of the peace, by the king's letters patents, or commission to them made, shall and may enjoy, have and exercise their said offices by virtue of the same letters patents, or commission, by themselves, or by their sufficient and

and able deputy instructed in the laws of this realm; any thing in this present act had or made to the contrary notwithstanding."

*Seet. 5.* " Provided also, and be it enacted by authority aforesaid, That the archbishop of *York*, the bishop of *Durham*, the bishop of *Ely*, and every of their successors, and all and every such person and persons, corporations, and bodies corporated, to whom the king's majesty, or any of his noble progenitors by his or their letters patents have given and granted any liberty and authority, or otherwise have authority by other lawful means or ways, to ordain, make and constitute any of the said officers of *custos rotulorum*, or clerk of the peace within the county palatine, or other place, shall and may have and enjoy the same liberty and authority, according as they have had and enjoyed the same; any thing in this present act had or made to the contrary notwithstanding."

Persons having authority to assign *custos rotulorum*, or clerk of the peace.

*Stat. 1 Will. & Ma. c. 21.* [*A. D. 1688. intituled*] " An act for enabling lords commissioners for the great seal to execute the office of lord chancellor or lord keeper."

*Seet. 4.* " And be it further enacted by the authority aforesaid, That the nominating and appointing of the *custos rotulorum*, throughout all the shires and counties of this realm, is and shall be as is directed by a statute made in the thirty-seventh year of *Henry the eighth*, intituled, *A bill for custos rotulorum, and the clerkship of the peace*; any law, usage, or statute to the contrary in any wise notwithstanding."

*Custos rotulorum* how to be chosen. 37 H. 8. c. 1.

*Seet. 5.* " And be it further enacted by the authority aforesaid, That the *custos rotulorum*, or other person, to whom of right it doth or shall belong to nominate or appoint the clerk of the peace for any county, riding, division, or other place, shall, from time to time, where the office of the clerk of the peace now is, or hereafter shall be void, nominate and appoint one able and sufficient person residing in the said county, riding, division or other place, for which he is so appointed or to be appointed clerk of the peace, to execute the same by himself or his sufficient deputy, and to take and receive the fees, profits, and perquisites thereof, for so long time only as such clerk of the peace shall well demean himself in his said office."

Clerk of the peace how to be appointed. Carthew 426.

*Seet. 6.* " And be it enacted by the authority aforesaid, That if any clerk of the peace already nominated or to be nominated, as aforesaid, shall misdemean himself in the execution of the said office, and thereupon a complaint and charge in writing of such misdemeanor shall be exhibited against him to the justices of the peace in their general quarter-sessions, it shall be lawful for the said justices, or the major part of them, from time to time, upon examination and due proof thereof, openly in their said general quarter-sessions to suspend or discharge him from the said office; and that in such case the *custos rotulorum*, or other person, to whom it shall of right belong to nominate and appoint the clerk of the peace for such county, riding, division or place, shall nominate and appoint one other able and sufficient person residing in the said county, riding, division or place as aforesaid, to be clerk of the peace in the place of such person so amoved,

Justices of the peace may discharge clerk of the peace.

Who shall nominate upon such vacancy.

as aforesaid; and in case of refusal or neglect to make such nomination and appointment, before the next general quarter-sessions to be holden after the said refusal, that it shall and may be lawful for the said justices of the peace, at their general quarter-sessions for the said county, riding, division or place, or the major part of them, to nominate and appoint one able and sufficient person residing in the said county, riding, division or place, to be clerk of the peace in the place of such person so removed, as aforesaid, to have, hold, and enjoy the said office of clerk of the peace, and to execute the same by himself or his sufficient deputy, and to receive the fees, profits and perquisites thereof."

New clerk of the peace liable to penalties, &c.

*Seet. 7.* "Provided always, and be it enacted by the authority aforesaid, That he shall be liable and subject to all the penalties, forfeitures conditions, limitations and provisions herein and hereby mentioned and expressed, and may be removed or discharged by the said justices, or the major part of them, in such manner and way as is above specified."

*Custos rotulorum, &c.* shall take no fee.

*Seet. 8.* "And be it further enacted by the authority aforesaid, That it shall not be lawful for any *custos rotulorum*, or other person to whom of right it doth or shall belong to nominate, elect, or appoint any clerk of the peace, to sell the said place of clerk of the peace, or to take any bond or other assurance to receive or have any reward, money, fee or profit, directly or indirectly, to him or any other person for such nominating, electing, or appointing; but that every such *custos rotulorum*, or other person that shall so sell the clerkship of the peace, and every clerk of the peace, who shall so buy this place, are hereby disabled to hold their places of *custos rotulorum*, or clerkship of the peace, and shall also each of them respectively forfeit double the sum or value of other thing that shall be so given or taken, to be recovered by him or them to their own use, that shall sue for the same, to be prosecuted by any action of debt, suit, bill, plaint or information, in any of their majesties courts at *Westminster*, wherein noessoign, protection or wager of law shall lie."

Clerk of the peace to take the following oath.

*Seet. 9.* "And be it further enacted by the authority aforesaid, That every clerk of the peace, before he enter upon the execution of his said office, shall in open sessions take the oath following, viz."

*I A. B. do swear, that I have not, nor will pay any sum or sums of money, or other reward whatsoever, nor given any bond or other assurance to pay any money, fee, or profit, directly or indirectly to any person or persons whomsoever, for such nomination or appointment.*

So help me God.

Not to extend to Lancaster.

*Seet. 10.* "Provided always, That nothing in this act contained shall any ways affect or relate to the clerk of the peace for the dutchy and county palatine of *Lancaster* only; which said clerk of the peace holds his said office for lives by grants from his late majesty king *Charles* the second, as his predecessors in the said place have done, from former kings and queens

queens of this realm, in right of their dutchy and county palatine aforesaid. This act to commence from the first day of May one thousand six hundred sixty-nine.

The clerk of the peace *must make out all procefs*, and when they are compleat *must deliver them to the custos*; but as long as they are in procefs, they are not to be with the clerk, but for refusing to deliver the rolls to the *custos*, he was indicted and *removed*, and a *mandamus* to restore him was denied *per* three justices against the chief justice. 4 *Mod.* 31. *Pasch.* 3 *W. & M.* in *B. R.* *The King and Queen v. Evans.*

*Indebitatus assumpsit*, and *non assumpsit* pleaded, the jury found the *stat.* 27 *H.* 8. and 1 *W. & M.* and the several clauses in them about the clerk of the peace; that the earl of Clare was *custos rotulorum* of *Middlesex*, and that he *named the plaintiff to be clerk of the peace*, to exercise the office by him or his deputy, *Quamdiu se bene gesserit*; that the plaintiff *was capable of the office, and duly admitted*; that the earl of Clare *was afterwards removed, and the earl of Bedford made custos rotulorum, who constituted, by writing under hand and seal, the defendant, during the time he was custos rotulorum, quamdiu the defendant se bene gesserit*; and on solemn argument, judgment *pro' quer. per tot. cur.* for that he had an estate for life, and was not removeable by the new *custos*. 12 *Mod.* 42. *Trin.* 5 *W. & M.* *Harcourt v. Fox.*

By the statute 1 *W. & M.* the *custos rotulorum* is to appoint a clerk of the peace for so long time only as he shall demean himself well. Owen brought a *mandamus* to the justices to restore him to that office. The return was, that the earl of Winchelsea, who was *custos rotulorum*, did appoint P. to be clerk of the peace *durante beneplacito, &c.* that the said earl being dead, the lord Sydney was made *custos*, who appointed S. to be clerk of the peace of Kent, pursuant to the said act. The question was, whether a grant of this office during pleasure, which is only an estate at will, shall be so governed by the statute as to make it an estate for life, when once the person is admitted to the office; so that let the *custos* make what appointment he will, though not pursuant to the statute, it is the statute, and not the *custos*, which gives an interest and estate to the nominee? Adjudged, that no *peremptory mandamus* shall go; for, by the act the *custos* is to nominate a clerk to execute the office so long as he shall demean himself well, &c. and if he appoint him in any other manner, he is no clerk of the peace; so that appointing during pleasure is not pursuant to the act; for he has not executed the authority given him by the act, and so the defendant has no title. 4 *Mod.* 293. *Trin.* 6 *W. & M.* in *B. R.* *The king v. Owen.*

It always belonged to the *custos rotulorum* to nominate the clerk of the peace, but the clerk of the peace was removeable when ever the *custos* was removed or changed, and moreover, was removeable at the will of the *custos* till 37 *H.* 8. 1. which makes him to continue in *quousque* the *custos* shall continue in; but now, by the late act, he is to continue for life; and though the words are, *give and grant to him*, yet it is only an appointment, and consequently may be without deed. 2 *Salk.* 467. *Trin.* 10 *W.* 3. *B. R.* *Sanders v. Owen.*



He is no more than a *ministerial officer*, and a record made by him is not to be pleaded as a *record*, and will not conclude the judgment of *B. R. Arg. 8 Mod. 43. Pasch. 7 Geo. 1.* in the case of *Colvin v. Fletcher*.

By *stat. 34 & 35 H. 8. c. 14.* the clerk of the peace shall certify into the King's Bench the names of such as shall be out-lawed, attainted, or convicted of felony.

By *stat. 22 & 23 Car. 2. c. 22. sect. 7.* the clerk of the peace shall deliver to the sheriff, within ten days after *Sept. 29.* yearly, a perfect estreat or schedule of all fines and other forfeitures in sessions.

*Seet. 8.* And also shall yearly, on or before the second *Monday* after the morrow of *All Souls*, deliver into the Exchequer a duplicate of such estreats so delivered to the sheriffs, that the sheriffs may be charged therewith on their apposals, on pain to forfeit 50*l.* the one moiety to the king, the other to the prosecutor.

*Seet. 9.* And if he shall spare, take off, discharge, or conceal any such fine or forfeiture, unless it be by rule of court, he shall forfeit treble value; half to the king, and half to him that shall sue; and shall also forfeit his office, and be incapable to be employed in any office where the revenue is concerned.

By *Stat. 4 & 5 W. & M. c. 24. sect. 5.* the clerk of the peace shall, upon delivery of the estreats into the court of *Exchequer*, take the following oath, to be administered by one of the barons:

*"You shall swear, that these estreats, now by you delivered, are truly and carefully made up and examined, and that all fines, issues, amercements, recognizances and forfeitures, which were set, lost, imposed, or forfeited, and in right and due course of law ought to be estreated in the court of Exchequer, are, to the best of your knowledge and understanding, therein contained, and that in the same estreats are also contained and expressed all such fines as have been paid into the court, from which the said estreats are made, without any wilful or fraudulent discharge, omission, misnomer, or defect whatsoever."*

By *stat. 3 Geo. 1. c. 15. sect. 12.* The barons of the Exchequer may amerce the clerk of the estreats, for neglecting to return the estreats according to the said two acts of 22 & 23 *Car. 2. c. 22.* and 4 & 5 *W. & M. c. 24.*

By *stat. 10 & 11 Will. 3. sect. 7. 8.* clerk of the peace shall have only 2*s.* for drawing an indictment of felony; and if it is defective, he shall draw a new one *gratis*, on pain of 5*l.* with full costs, to him that shall sue.

By *stat. 2 Geo. 2. c. 46. sect. 14.* No clerk of the peace, or his deputy, shall act as solicitor, attorney, or agent, or sue out any process at any general or quarter-sessions, when he shall execute the office of clerk of the peace or deputy; on pain of 50*l.* to him who shall sue in 12 months, with treble costs.

## Clocks and Watches.

**STATUTE** 27 *Geo. 2. c. 7.* [*A. D. 1754. Intituled*] “ An act for the more effectual preventing of frauds and abuses committed by persons employed in the manufacture of clocks and watches.”

“ Whereas many persons, employed in the making of clocks and watches, have of late been guilty of divers frauds and abuses by purloining, imbezilling, secreting, selling, pawning, or otherwise unlawfully disposing of the clocks and watches, or such parts thereof, or the materials for making the same, with which they have been intrusted, to the great loss of their employers; and the laws in being have been found insufficient to prevent such frauds and abuses, and to punish the offender; Be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person or persons whatsoever, who shall be hired or employed by any person or persons practising the trade or trades of clock-making or watch-making, or any part or branch, or parts or branches of such trade or trades, to make, finish, alter, repair or clean any clock or clocks, watch or watches, or any part or parts of a clock or clocks, watch or watches, or be intrusted by any person or persons practising the said trade or trades, with any gold, silver or other meral or materials to be, or that shall be in the whole or in part wrought or manufactured for any part or parts of a clock or clocks, watch or watches, or any diamond or other precious stone to be, or that shall be set or fixed in or about any clock or clocks, watch or watches, shall, after the first day of *May* one thousand seven hundred and fifty-four, purloin, imbezil, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any clock or watch, or any part or parts of any clock or watch, or any gold, silver or other meral or material, or any part thereof, or any diamond or other precious stone, with which such person or persons shall be intrusted by any person or persons practising the said trade or trades, or any part or branch, or parts or branches of such trade or trades, and shall be thereof convicted by the oath of the owner of such goods, or by the oath of any other credible witness or witnesses, or by the confession of the person or persons charged with such offence, before any one or more justice or justices of the peace of the county, riding, division, city, liberty, town or place, where such offence shall be committed, or where the person or persons so charged shall reside or inhabit (which oath the said justice or justices is and are hereby empowered and required to administer); every such offender shall for the first offence forfeit twenty pounds; and in case the said forfeiture shall not be forthwith paid,

Penalty on conviction of frauds committed by the persons employed in the manufacture of clocks and watches.

First offence.

Subsequent  
offence.

paid, the justice or justices, before whom such conviction shall be had, shall commit the party or parties so convicted to the house of correction or other publick prison of such county, riding, division, city, liberty town or place, there to be kept to hard labour for the space of fourteen days, unless such forfeiture shall be sooner paid; and if within two days before the expiration of such fourteen days, such forfeiture shall not be paid, the said justice or justices is and are hereby impowered to order the person or persons so convicted to be publickly whipped at the market place, or some other publick place of the city, town or place, where such offender or offenders shall be respectively committed; and in case of a further conviction in manner before prescribed by this act, for or upon a second or other subsequent offence of the same kind, the person or persons so again offending, being thereof convicted in manner aforesaid, shall for every second or subsequent offence forfeit forty pounds; and in case the said forfeiture shall not be forthwith paid, the justice or justices before whom such conviction shall be had, shall commit the person or persons so again offending to the house of correction or other publick prison as aforesaid, there to be kept to hard labour for any time not exceeding three months, nor less than one month, unless the said forfeiture shall be sooner paid; and if within seven days before the expiration of the time for which such offender or offenders shall be committed, the said forfeiture shall not be paid, the said justice or justices is and are hereby impowered to order the person or persons so again offending to be publickly whipped at the market place, or some other publick place of the city, town or place, where such offender or offenders shall be respectively committed, twice or oftener, as to such justice or justices shall appear reasonable.

Penalty of  
buying, &c.  
any of the  
goods or ma-  
terials, know-  
ing the same  
to be purloin-  
ed.

First offence.

*Sect. 2.* " And be it further enacted by the authority aforesaid, That if any person or persons shall buy, receive, accept or take by way of gift, pawn, pledge, sale or exchange, or in any other manner whatsoever, of or from any person or persons whomsoever, any clock or watch, or any part or parts of a clock or watch, or any gold, silver or other metal or materials as aforesaid, whether the same, or any part thereof, be or be not wrought or manufactured, or any diamond, or other precious stone, which shall have been intrusted with any person or persons hired or employed as aforesaid, by any person or persons practising the said trade or trades, he, she or they, so buying, receiving, accepting or taking any such goods, materials or effects, knowing the same to be so purloined or imbezilled, being thereof lawfully convicted in manner before prescribed, for the conviction of persons purloining or imbezilling the said goods, materials or effects, shall, for the first offence, forfeit twenty pounds; and in case the said forfeiture shall not be forthwith paid, the justice or justices, before whom such conviction shall be had, shall commit the party or parties so convicted, to the house of correction or other publick prison as aforesaid, there to be kept to hard labour, for the space of fourteen days, unless the said forfeiture shall be sooner paid; and if within two days before the expiration of the said fourteen days, the said forfeiture shall not be paid, the said justice or justices is and are hereby impowered and required, to order the person or persons so convicted to be publickly whipped at the market-place, or some other publick place of the city, town, or place, where

where such offender or offenders shall be respectively committed, once or oftener, as to such justice or justices shall appear reasonable; and in case of a further conviction for or upon a second or any other subsequent offence of the same kind, the person or persons so again offending, being thereof convicted in manner before prescribed, shall, for every second or other subsequent offence, forfeit forty pounds; and in case the said forfeiture shall not be forthwith paid, the justice or justices, before whom such conviction shall be had, shall commit the party or parties so convicted to the house of correction, or other publick prison as aforesaid, there to be kept to hard labour for any time not exceeding three months, nor less than one month, unless the said forfeiture shall be sooner paid; and if within seven days before the expiration of the time for which such offender or offenders shall be committed, the said forfeiture shall not be paid, the said justice or justices is and are hereby impowered and required to order such offender or offenders to be publicly whipped at the market-place, or some other publick place of the city, town or place where such offender or offenders shall be respectively committed, twice or oftener, as to such justice or justices shall appear reasonable; and the said respective forfeitures, when recovered, after satisfaction shall have been made thereof to the party or parties injured, together with such costs of prosecution as shall be judged reasonable by the justice or justices before whom such conviction shall have been had, shall be paid and applied to and for the use of the poor of the parish or place where the person or persons so convicted shall reside or inhabit.

Subsequent offence.

Application of the forfeitures.

SECT. 3. " Provided always, and it is hereby enacted, That if any person convicted as aforesaid, of purloining, embezzling, secreting, selling, pawning, exchanging, or otherwise unlawfully disposing of, or of buying, receiving or taking to pawn any of the goods, materials or effects, herein before-mentioned, shall think himself or herself aggrieved by the judgment of the justice or justices before whom he or she shall have been convicted, such person shall have liberty to appeal to the justices at the next general or quarter sessions of the peace, which shall be held for the county, riding, division, city, liberty, town or place, where such judgment shall have been given; and that the execution of the said judgment shall in such case be suspended, the person so convicted entering into a recognizance at the time of such conviction, with two sufficient sureties, in double the sum which such person shall have been adjudged to forfeit, upon condition to prosecute such appeal with effect, and to be forth-coming to abide the judgment and determination of the justices in the said general or quarter sessions; which recognizance the said justice or justices before whom such conviction shall be had is and are hereby impowered and required to take; and the justices in the said general or quarter sessions are hereby authorized and required to hear and finally determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable, to be paid by either party; and if, upon the hearing of the said appeal, the judgment of the justice or justices before whom the appellant shall have been convicted shall be

Appeal to the quarter-sessions.

Recognizance with sureties.

Justices to hear and determine,

Form of the  
conviction ;

“ *Middlesex,* } **B**E it remembered, That on the \_\_\_\_\_ Day of  
*to wit.* \_\_\_\_\_ in the \_\_\_\_\_ year of his ma-  
 jesty’s reign, *A. B.* was convicted before me (or us) \_\_\_\_\_ of his ma-  
 jesty’s justices of the peace for the said county of \_\_\_\_\_ or for the  
 \_\_\_\_\_ riding (or division) of the said county of \_\_\_\_\_ or  
 for the city, liberty or town of \_\_\_\_\_ in the said county of  
 \_\_\_\_\_ (as the case shall be) of purloining, embezilling, se-  
 creting, selling, pawning, exchanging, or unlawfully disposing of, or of  
 buying, receiving or taking to pawn (as the case shall happen to be)  
 \_\_\_\_\_ (specifying the respective goods, materials or effects)  
 the property of *C. D.* of \_\_\_\_\_ in the county of \_\_\_\_\_

not to be removed by *certiorari*, and to be transmitted to the next quarter-sessions, 66.

Which said form and conviction shall not be liable to be removed by *certiorari* into his majesty's court of *King's Bench*; and the said justice or justices, before whom such conviction shall be had, shall cause the same, drawn up in the form aforesaid, to be fairly written upon parchment, and transmitted to the next general or quarter sessions of the peace, to be held for the county, riding, division, city, town or liberty wherein such conviction was had, to be filed and kept amongst the records of the said general or quarter sessions; and in case any person or persons so convicted shall appeal from the judgment of the said justice or justices to the said general or quarter sessions, the justices in such general or quarter sessions are hereby required upon receiving the said conviction, drawn up in the form aforesaid, to proceed to the hearing and determination of the matter of the said appeal, according to the directions of this act; any law or usage to the contrary notwithstanding.

*See*

*Stat. 5.* "And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any one justice of the peace of any county, riding, division, city, liberty, town or place, and he is hereby required, upon complaint to him made upon oath, of any offence committed against this act within the same county, riding, division, city, liberty, town or place, to issue his warrant for apprehending and bringing before him, or before any other justice or justices of the peace of the same county, riding, division, city, liberty, town or place, the person or persons charged with such offence; and the justice or justices, before whom such person or persons shall be brought, is and are hereby authorized and required to hear and determine the matter of every such complaint, and to proceed to conviction and judgment thereupon."

## Coals and Coal-pits.

**B***Y stat. 10 Geo. 2. c. 32. sect. 6.* If any person shall wilfully and maliciously set on fire any mine, pit, or delph of coal, or cannel coal, he shall be guilty of felony without benefit of clergy. *See Burning,* page 486.

*Stat. 13 Geo. 2. c. 21. [A. D. 1740. intituled]* "An act for further and more effectually preventing the wilful and malicious destruction of collieries and coal works."

"Whereas of late divers evil-disposed persons, possessed of or interested in collieries, have by secret and subtil devices wilfully and maliciously attempted to drown adjacent collieries, and have by means of water conveyed or obstructed for that purpose destroyed or damaged the same, intending thereby to enhance the price of coals, and gain the monopoly thereof: And whereas by an act made in the tenth year of the reign of his present majesty it was enacted, That if any person or persons shall wilfully and maliciously set on fire, or cause to be set on fire, any mine, pit, or delph of coal, or cannel coal, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy: And whereas it is reasonable that an adequate punishment should likewise be inflicted on persons who shall wilfully and maliciously destroy or damage collieries by means of water, as aforesaid; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled,

Persons  
drowning  
coal pits, shall  
pay treble da-  
mages, and  
full costs.

fembled, and by the authority of the same, That if any person, from and after the twelfth day of *June* one thousand seven hundred and forty, shall unlawfully, wilfully, and maliciously divert, or cause to be diverted water from any river, brook, watercourse, channel, or land flood, or convey, or cause to be conveyed water into any coal work, mine, pit, or delph of coal, or into any subterraneous cavities or passages, or make, or cause to be made any subterraneous cavities or passages, with design thereby to destroy or damage any coal work, mine, pit, or delph of coal belonging to any other person or persons, or shall for that purpose unlawfully, wilfully, and maliciously destroy or obstruct any fough or sewer (which has been a fough or sewer in common for fifty years) made for draining any coal work, mine, pit, or delph of coal, or shall attempt or continue any such mischievous practice, or shall aid or assist therein in manner aforesaid; every such person shall, for every such offence, forfeit and pay to the party or parties aggrieved treble damages, and full costs of suit, to be sued for and recovered by action of debt, bill, plaint or information in any of his majesty's courts of record at *Westminster*.

Except such  
coal pits are  
their own.

*Señ. 2.* " Provided always, That nothing in this act contained shall prevent or restrain, or be construed to prevent or restrain any person or persons, being the owner or owners of any fough, drain, or sewer, from destroying, obstructing, or diverting, using, or disposing of any such fough, drain, or sewer, in such manner as he, she, or they respectively may now lawfully do.

*Stat. 17 Geo. 2. c. 35. [A. D. 1744. intituled]* " An act to explain, amend, and enlarge an act made in the sixteenth and seventeenth year of the reign of king *Charles* the second, intituled, *An act for regulating the measures and prices of coals.*"

16 & 17 Car.  
2. c. 2.

" Whereas by an act made in the sixteenth and seventeenth year of the reign of king *Charles* the second, intituled, *An act for regulating the measures and prices of coals*, it is (amongst other things) enacted, That the lord mayor of *London*, and the court of aldermen, for the time being, and the justices of peace of the several and respective counties and places where coals, commonly called *sea coals*, brought into the river of *Thames*, are sold by retail, or any three or more of them, whereof one to be of the *quorum*, should be, and are thereby impowered to set the rates and prices of all such coals as should be sold by retail, as they from time to time should judge reasonable, allowing a competent profit to the said retailer, beyond the price paid by him to the importer, and the ordinary charges thereupon accruing: And whereas many exactions and abuses are used by retailers of sea coals, brought by sea into other rivers, creeks, havens, ports, cities, boroughs, towns, counties and places, within the kingdom of *England*, dominion of *Wales*, and town of *Berwick* upon *Tweed*, besides such counties and places where such coals brought into the river *Thames* were and are sold by retail: for avoiding

of which exactions and abuses in such other counties and places as aforesaid, a like remedy is needful to be provided, as by the said recited act is provided, touching the retailers of coals brought into the said river of *Thames*, and sold; wherefore Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June*, in the year of our Lord one thousand seven hundred and forty-four, the justices of the peace of the several counties in the kingdom of *England*, dominion of *Wales*, and of the town of *Berwick upon Tweed*, or any three or more of them, whereof one to be of the *quorum*, shall be, and are hereby impowered to set the rates and prices of all such coals called *Sea Coals*, as shall be brought by sea into any other rivers, creeks, havens, or ports, and sold by retail after landed, in any other cities, boroughs, towns, counties, and places, within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, to which the said recited act doth not extend, as they from time to time shall judge reasonable, allowing a competent profit to the said retailer, beyond the price paid by him to the importer, and the ordinary charges thereupon accruing; and that if any ingrosser or retailer of such coals shall refuse to sell as aforesaid, that then the said justices of the peace respectively are hereby authorized to appoint and empower such officer or officers, or other persons, as they shall think fit, to enter into any wharf, or other place, where such coals are stored up; and in case of refusal, taking a constable, to force entrance, and the said coals to sell, or cause to be sold, at such rates as the said justices respectively shall judge reasonable, rendering to such ingrosser or retailer the money for which the said coals shall be so sold, necessary charges being deducted; and if any action shall be commenced against the justice of peace, constable, or any officer or person, for any thing to be done in pursuance of this act, the defendant in every such action may plead the general issue, and give the special matter in evidence; and if the verdict be found for him, or the plaintiff become nonsuited, such defendant shall recover and have his damages, and treble costs of suit, for his unjust vexation in that behalf.

*Sec. 2.* "Provided always, That no person having interest in any wharf used for the receiving and uttering of coals, or that doth or shall trade by himself or others, in his own or any other name, in the sale of any coals, or the engrossing the same, in order to sell the same, and not for his own private use only, shall act, or otherwise intermeddle in the setting the price of coals; any thing in this act to the contrary in any wise notwithstanding."

Three justices to set the retail price on coals in any part of *England*, &c.

allowing a competent profit to the retailers. Power of justices, if the retailers refuse to sell as ordered.

General issue:

Treble costs.

No interested person to be concerned in setting a price on coals.



*Statutes concerning the duties on coals, and for regulating the coal trade in general.*

Duty on every tun of foreign coals usually sold by weight 3*s.* by 8 *Ann.* c. 4. *sect.* 1.

And 2*s.* by 9 *Ann.* c. 6. *sect.* 8.

And every chaldron of foreign coals usually sold by measure 4*s.* 6*d.* by 1 *Ann.* c. 4. *sect.* 1.

And 3*s.* by 9 *Ann.* c. 6. *sect.* 8.

And every chaldron of such, or any other coal or culm, imported into the port of *London*, if usually sold by measure, and every tun if usually sold by weight, 3*s.* by *stat.* 1 *Geo.* 1. *stat.* 2. c. 23. *sect.* 1.

And 3*s.* by 5 *Geo.* 1. c. 9. *sect.* 1.

And every chaldron of coals carried coastwise, if usually sold by measure, 3*s.* by 8 *Ann.* c. 4. *sect.* 1.

And 2*s.* by 9 *Ann.* c. 6. *sect.* 8.

And every tun of coal carried coastwise 2*s.* by 8 *Ann.* c. 4. *sect.* 1.

And 1*s.* 4*d.* by 9 *Ann.* c. 6. *sect.* 8.

And every chaldron of culm carried coastwise, if usually sold by weight, 7<sup>1</sup>/<sub>2</sub> of a penny, by 8 *Ann.* c. 4. *sect.* 1.

And 4<sup>1</sup>/<sub>2</sub> of a penny, by 9 *Ann.* c. 6. *sect.* 8.

And every chaldron of pit coal-cinder carried coastwise 3*s.* by 8 *Ann.* c. 4. *sect.* 1.

And 2*s.* by 9 *Ann.* c. 6. *sect.* 8.

The keels at *Newcastle* shall be measured by the king's commissioners, 9 *H.* 5. *stat.* 1. c. 10. 30 *Car.* 2. c. 8. 6 & 7 *W.* 3. c. 10.

The king's claim to a duty of two pence a chaldron at *Newcastle*, 21 *Jac.* 1. c. 2. *sect.* 5.

The liberties of the hoast-men of *Newcastle* in selling coals. 21 *Jac.* 1. c. 1. *sect.* 12.

Exporting coals without payment of the duty, forfeits double the duty. 13 & 14 *Car.* 2. c. 11. *sect.* 9.

The weight and measure of coals in *London*. 16 & 17 *Car.* 2. c. 2.— Damages, &c. for persons acting under the act. *Ibid.* *sect.* 4.

Justices of peace may set the price of coals in *London*. 16 & 17 *Car.* 2. c. 2.

A duty of 12*d.* a chaldron given to the city of *London*. 19 *Car.* 2. c. 3. *sect.* 36. 22 *Car.* 2. c. 11. *sect.* 38.

Boats and carts carrying coals at *Newcastle*, to be measured. 30 *Car.* 2. c. 8. 6 & 7 *W.* 3. c. 10.

A duty laid upon coals for the relief of orphans, &c. 5 *W.* & *M.* c. 10. *sect.* 10. The duty continued, 21 *Geo.* 2. c. 29. *sect.* 1.

A duty laid upon coals, 6 & 7 *W.* 3. c. 18.

Allowance of seamen to coal ships free from impressing, 6 & 7 *W.* 3. c. 18. *sect.* 19.

An expired duty upon coals, 9 & 10 *W.* 3. c. 13. and upon cinders, 10 & 11 *W.* 3. c. 21. *sect.* 28.

Additional duty upon coals, 8 *Ann.* c. 4. 9 *Ann.* c. 6. *sect.* 8.

Coals carried from *Sterling* to *Dunbar* exempted, 8 *Ann.* c. 4. *sect.* 39. 9 *Ann.* c. 6. *sect.* 10.

Over-sea duty of 3 s. by 6 *Ann.* c. 22. on coals exported in *British* ships, taken off, 8 *Ann.* c. 13. *sect.* 15.

A duty imposed upon exported coals, 9 *Ann.* c. 6. *sect.* 5. 12 *Ann.* *ft.* 2. c. 9. *sect.* 9. 30 *Geo.* 2. c. 19. *sect.* 28. Made perpetual by 1 *Geo.* 2. c. 7. and part of general fund.

Coals exported to *Ireland*, *Isle of Man* or plantations excepted, 12 *Ann.* *ft.* 2. c. 9. s. 9.

A duty on coals for building 50 churches, 9 *Ann.* c. 22.

Coals exported from the west of *Scotland* to *Ireland*, &c. charged with the same duties as coals from the west of *England* to *Ireland*, 9 *Ann.* c. 22. *sect.* 90.

Combinations of coal-owners, &c. prohibited, 9 *Ann.* c. 28.

Regulations of the several branches of the coal-trade, 9 *Ann.* c. 28. 1 *Geo.* 1. c. 26. *sect.* 1.

The contents of coal-bushel, 12 *Ann.* *ft.* 2. c. 17. *sect.* 11.

Lottery annuities granted upon the coal duties, 5 *Geo.* 1. c. 9. *sect.* 13. and the surplus to be disposed of by parliament, *sect.* 42.

The duties imposed by 8 *Ann.* c. 4. made perpetual by 5 *Geo.* 1. c. 19. and part of *South-Sea* fund.

Exemption of coals carried from *Ellen-Foot* to *Bank-End*, 8 *Geo.* 1. c. 14. *sect.* 14.

Application of the surplus of the coal duty, 13 *Geo.* 1. c. 21.

Dealers in coals may use their own lighters on the *Thames*, 3 *Geo.* 2. c. 26.

Dealers not to act as crimps, 3 *Geo.* 2. c. 26. *sect.* 3.

Penalty on receiving premium for contracts for coals, 3 *Geo.* 2. c. 26. *sect.* 4.

The forms prescribed for contracts and notes for coals, 3 *Geo.* 2. c. 26. *sect.* 6, &c.

Penalty on masters of ships refusing to account, 3 *Geo.* 2. c. 26. *sect.* 9.

On lighter-men, &c. delivering coals without the ingrain, 3 *Geo.* 2. c. 26. *sect.* 10.

Sacks and other coal measures to be marked, 3 *Geo.* 2. c. 26. *sect.* 11.

Penalty on masters of coal-ships keeping turn, 4 *Geo.* 2. c. 30.

Masters of colliers to declare their coquets in four days, 4 *Geo.* 2. c. 30. *sect.* 2.

All coal contracts at *Billingsgate* to be signed and produced, 11 *Geo.* 2. c. 15. *sect.* 6.

Waggons at *Newcastle*, &c. to be measured and marked, 11 *Geo.* 2. c. 15. *sect.* 8.

A drawback of the duty on coals used in fire-engines for draining the tin and copper-mines in *Cornwall*, 14 *Geo.* 2. c. 41. *sect.* 3.

## Coals and Coal-pits.

Land coal-meter's office for *Westminster* erected, 19 *Geo. 2. c. 35.*  
20 *Geo. 2. c. 49.* Penalty on coal-meters not attending, 23 *Geo. 2. c. 26.*  
*f. 4.*

Penalty on ships exporting coals entered coastwise, 22 *Geo. 2. c. 37.*  
*sect. 3.*

Ships having exported coals, not to be cleared out till the duty paid,  
22 *Geo. 2. c. 37.*

Penalty on principal land coal-meters neglecting to station labouring  
coal-meters, as directed by 19 *Geo. 2. c. 35.* 23 *Geo. 2. c. 26. sect. 4.*

Additional duty on coals exported, 30 *Geo. 2. c. 19. sect. 28.*

Culm may be exported for fifteen years to *Lisbon*, 31 *Geo. 2. c. 15. sect.*

Punishment of delivering coals fraudulently, 32 *Geo. 2. c. 27.*

Culm how to be exported from *Milford*, 33 *Geo. 2. c. 15.*

## Coin.

COIN, (coin, in *French*) says lord *Coke*, signifies a corner, and from  
thence hath its name; because in ancient time money was square with  
corners, as it is in some countries at this day. *Co. Lit. 107. b.*

The legitimation of money, and the giving it its denominated value, is  
justly reckoned *inter jura majestatis*, and in *England* it is one special part of  
the king's prerogative. 1 *Hale's H. P. C. 188.*

And the king may by his proclamation legitimate foreign coin, and make  
it current money of this kingdom, according to the value imposed by  
such proclamation. 1 *Hale's Hist. P. C. 192.* And therefore both *English*  
money, coined by the king's authority, and foreign coin made current by  
proclamation, are within the denomination of lawful money of *England*.  
*P. Co. Lit. 207.*

And no person can be enforced to take in payment any money but of  
lawful metal, that is, of silver or gold. 2. *Inst. 577.* Except for sums  
under six-pence. 1 *Hale's Hist. 195.*

By Stat. 25. *Ed. 3. st. 5. c. 2. [A. D. 1350]* "If a man counterfeit the  
king's money, and if a man bring false money into this realm, counterfeit  
to the money of *England*, as the money called *Lusburgh*, or other like to the  
said money of *England*, knowing the money to be false, to merchandize or  
make payment, in deceit of the king and his people, he shall be guilty of  
high treason."

*If a man counterfeit the king's money*] It is said, that those who coin money  
without the king's authority, are guilty of high treason within this act,  
whether they utter it or not; and that those who have the king's authority  
to coin money are guilty of high treason if they make it of baser alloy than  
they ought; and that those also are guilty of the same crime, who receive  
and

and comfort one who is known by them to be guilty thereof; but that clippers, &c. are not within this statute. 1 *Hawk. P. C.* 42.

But it seems that those who barely utter false money made within the realm, knowing it to be false, are neither guilty of high treason, nor of a misprision thereof, but only of a high misprision: Yet by 8 & 9 *Will. 3. c.* 26. they are in some cases made guilty of felony. 1 *Hawk. 42.*

Such money only as is coined by the king's authority, either in gold or silver within the realm, and consequently not brass farthings, &c. shall come under this denomination. 1 *Hawk. 42.*

But the mischiefs intended to be remedied by this statute, having been found by experience not to have been sufficiently redressed by it as thus restrained, the same have been farther provided for by subsequent statutes. 1 *Hawk. 42.*

**Stat. 1 Mar. Seff. 2. c. 6.** [*A. D. 1553. Intituled*] "An act that the counterfeiting of strange coins being current within this realm, the queen's highness sign manual, signet or privy seal, to be adjudged treason."

"Forasmuch as by the laws of this realm, small and no due and condign punishment is at this present time provided for such evil disposed persons as shall counterfeit or forge such kind of gold or silver of other realms, as is not the proper coin of this realm, yet permitted and suffered by the queen our sovereign lady's consent, and heretofore hath been permitted and suffered by the consent of her most noble progenitors, to be currant in payment within this her realm, nor for such persons as shall counterfeit the queen's highness sign manual, or privy signet, or privy seal; by reason whereof divers evil disposed persons are encouraged and boldned daily to perpetrate and commit the said several offences:

**Sect. 2.** "For remedy whereof, Be it enacted by our sovereign lady the queen, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That if any person or persons hereafter falsly forge and counterfeit any such kind of coin of gold or silver, as is not the proper coin of this realm, and is or shall be currant within this realm by the consent of the queen, her heirs or successors: (2) Or if any person or persons at any time hereafter do falsly forge or counterfeit the queen's sign manual, privy signet, or privy seal; (3) that then every offence shall be deemed and judged high treason. (4) And the offenders therein, their counsellors, procurers, aiders and abettors, being convict according to the laws of this realm of any of the said offences, shall be likewise deemed and adjudged traitors against the queen, her heirs and successors, and the realm, and shall suffer and have such pains of death, forfeiture of lands, goods and cattels, and also lose the privilege of all sanctuary, as in the case of high treason is used and ordained."

Treason to forge the coin of other realms currant in this realm, or the king's sign manual, &c. 25 Ed. 3. stat. 5. c. 13.

**Stat. 1 & 2 Phil. & Ma. c. 11.** [*A. D. 1554. Intituled*] "An act for the punishment of the bringing in of the counterfeit coins of foreign realms, being current within this realm."

Bringers in of counterfeit coin into this realm, shall be punished as traytors.

“ Where divers and sundry coins of gold and silver of other realms, not being of the proper coin of this realm of *England*, and yet by the sufferance and consent of the king and queen our sovereign lord and lady, be current in payment within this realm, many ill-disposed persons, for their own corrupt lucre and advantage, have now of late brought into this realm, from the parts beyond the sea, great quantity of forged and counterfeit money, like to the said coin of other foreign realms, and have uttered the same here, by merchandizing and otherwise, to divers of the subjects of this realm, to their great deceit, hurt and damage; (2) because the said ill disposed persons have perceived and understood, that there was not, nor yet is any sufficient law or statute made or provided for the condign punishment of the offenders in that behalf :

*Sect. 2.* “ Wherefore be it enacted and established by the authority of this present parliament, That if any person or persons, after the twentieth day of *January* next coming, shall bring from the parts of beyond the sea, into this realm, or into any of the dominions of the same, and such false and counterfeit coin of money, being current within this realm, as is aforesaid, knowing the same coin or money to be false and counterfeit, to the intent to utter or make payment with the same within this realm, or any the dominions of the same, by merchandizing or otherwise; That all and every such person or persons so offending as is aforesaid, their counsellors, procurers, aiders and abettors in that behalf, shall be deemed and adjudged to be offenders in high treason, and shall suffer, after lawful conviction or attainder thereof, such pains of death, loss and forfeiture of lands, goods and cattels, as other offenders shall do in cases of high treason.

The manner of indictment, trial, &c. of an offender for impairing or forging of coin.

*Sect. 3.* “ And be it further enacted by the authority aforesaid, That all and every person or persons, that shall at any time after the said twentieth day of *January* be accused or impeached of any of the offences contained and provided for in this estatute, or of any other offence or offences concerning the impairing, counterfeiting or forging of any coin current within this realm, shall and may be indicted, arraigned, tried, convicted or attainted by such like evidence, and in such manner and form as hath been used and accustomed within this realm, at any time before the first year of the reign of our late sovereign lord, king *Edward* the sixth; any statute, custom, law or usage to the contrary thereof in any wise notwithstanding. 9 *Ed. 3. stat. 2. c. 2.*”

**Stat. 5 Eliz. c. 11.** [*A. D. 1562. intituled*] “ An act against the clipping, washing, rounding, and filing of coins.”

The clipping, &c. of coins for gain's sake, shall be high treason.

3 H. 5. c. 6.  
1 Mar. sess. 1.  
c. 1. The pre-

“ Whereas the offences of clipping, rounding, washing and filing of money or coins of this realm, was declared by an act of parliament in the time of king *Henry* the fifth, to be treason to the king and the realm, and according to the said act, the same offences were and did continue treason until the first year of the reign of queen *Mary*; at which time the pains and penalties due for the said offences, were abrogated and taken away by the general

neral act of repeal then made; (2) By reason whereof, divers false and evil-disposed persons, perceiving themselves to be loose and free from the severity and danger of the said law and penalty, have been of late the more hardy and bold, to attempt and practise, for wicked lucre and gain's sake, to diminish, impair, and falsify the monies and coins current within this realm, and the dominions of the same, by such clipping, washing, rounding and filing thereof, not only to the great dishonour of the queen's majesty our sovereign lady that now is, by whose great goodness new monies or coins of the same are now reduced to as much fineness as ever hath been in any time of her noble progenitors, but also to the great loss and damage of the good subjects of this realm, and more is like to be hereafter, if the same is not speedily met withal:

*Sect. 2.* "For remedy whereof, Be it enacted, declared and established by the authority of this present parliament, That from and after the first day of *May* next coming, clipping, washing, rounding, or filing for wicked lucre or gain's sake, of any the proper monies or coins of this realm, or the dominions thereof, or of the monies or coins of any other realm, allowed and suffered to be current within this realm, or the dominions thereof, at this present, or that hereafter at any time shall be the lawful monies or coins of this realm or of the dominions thereof, or of any other realm, and by proclamation allowed and suffered to be current here, by the queen's majesty, her heirs and successors, shall be taken, deemed, and adjudged by virtue of this act to be treason; (2) and the offenders therein, their counsellors, consenters and aiders, shall be, from and after the same first day of *May*, taken, deemed and adjudged as offenders in treason, and being thereof lawfully convicted or attainted, according to the due order and course of the laws of this realm, shall suffer pains of death, and lose and forfeit all his and their goods and chattels; (3) and also shall lose and forfeit all his and their lands and tenements, during his and their natural life or lives only."

*Sect. 3.* "And be it further enacted by the authority aforesaid, That all and every person and persons which have any lawful grant to have and enjoy the forfeiture of lands, tenements, goods or chattels of offenders, and men attainted in high treason, within any manor, lordship, town, parish, hundred, or other precinct within this realm of *England* or *Wales*, shall and may at all times hereafter have like liberty to take, seize and enjoy all such forfeitures of lands, tenements, goods and chattels, as shall come to grow within their liberties, by force of the attainder of any person or persons, for and upon any offence or offences made treason by this act, as they or any of them should, ought, or might have by virtue of any good and lawful grant to them or any of them heretofore had or made."

*Sect. 4.* "Provided always, and be it enacted by the authority aforesaid, That this act, nor any thing therein contained, nor any attainder or attainders of any person or persons, for any offence or offences made treason by this act, shall in any wise extend or be judged, interpreted or expounded, to make any corruption of blood, to any the heir or heirs of any such offender or offenders, or to make the wife of any such offender to lose or forfeit her dower, of or in any lands, tenements or hereditaments, or other

judges re-  
dounding to  
the queen,  
and the realm,  
by clipping,  
washing, &c.  
of money.  
3 Inst. 17.

The clipping,  
washing,  
rounding, or  
filing of cur-  
rent money,  
shall be ad-  
judged trea-  
son. Inforced  
by 18 El. c. 1.

Dyer 230.

They who  
have forfeitures  
of lands or  
goods by  
grant, shall in  
this case enjoy  
them.

These offences  
make no cor-  
ruption of  
blood or for-  
feiture of  
dower.

title, action or interest in the same; any thing in this act contained, or any attainder or attainders hereafter to be had for any offence or offences made treason by this act, to the contrary notwithstanding."

Trial of a  
peer by peers.

*Sect. 5.* "And be it further enacted by the authority aforesaid, That if any of the lords of the parliament, or peer of this realm for the time being, shall fortune at any time hereafter to be indicted of any offence made treason by this act; that then they and every of them shall have his or their trial by their peers, as hath been used heretofore in cases of high treason."

*Stat. 14 Eliz. c. 3. [A. D. 1572. intituled]* "An act against the forging and counterfeiting of foreign coin being not current within this realm."

It is misprison  
of high trea-  
son to forge  
money, which  
is not the coin  
of this realm,  
nor current  
therein.  
3 inst. 17.

Forasmuch as by the laws or statutes of this realm, small or no condign punishment is at this time provided for such evil-disposed persons as shall counterfeit or forge such kind of gold or silver of other realms, as is not the proper coin of this realm, nor current in payment within this realm; by reason whereof divers evil-disposed persons as well without this realm as within, are encouraged and emboldned daily to counterfeit or forge such kind of gold and silver, and utter the same in this realm, in great deceit of her majesty's subjects: (2) Be it enacted by our said sovereign lady the queen, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That if any person or persons hereafter falsly forge or counterfeit any such kind of coin of gold or silver, as is not the proper coin of this realm, nor permitted to be current within this realm; that then every such offence shall be deemed and judged misprison of high treason; (3) and the offenders therein, their procurers, aiders and abettors, being convicted according to the laws of this realm of such offences, shall be imprisoned, and forfeit such lands, goods and chattels, as in cases of misprison of treason for concealment of high treason."

The penalty  
of forging of  
coin which  
is not the  
money of this  
realm, nor cur-  
rent therein.

*Stat. 18 Eliz. c. 1. [A. D. 1576. Intituled]* "An act against the diminishing and impairing of the queen's majesty's coin, and other coins current within this realm."

Diminishing,  
sealing, or  
lightning of  
any coin cur-  
rent within  
this realm,  
shall be high  
treason. 5 El.  
c. 11.  
3 inst. 17.

"Whereas the offences of clipping, rounding, washing and filing, for wicked lucre or gains-sake, of any the proper monies or coins of this realm, or the dominions thereof, or of the monies or coins of any other realm, allowed by proclamation, and suffered to be current within this realm, or the dominions thereof, by a statute made in the fifth year of the queen's majesty's reign, are taken, deemed, and adjudged to be treason; (2) and the offenders therein, the counsellors, consenters and aiders likewise deemed and adjudged as offenders in treason, and being thereof lawfully convicted or attainted, according to the due order and course of the laws of this realm, are to suffer pains of death, and to lose and forfeit all his and their goods and chattels, and also all his and their lands and tene-  
ments,

ments, during his and their natural life or lives only, as by the said statute thereof made, among other things therein contained, more at large it doth and may appear: (3) Sithence the making of which good law and statute, divers false and evil-disposed persons, knowing that the said law, being, as it is; penal, ought to be taken and expounded strictly according to the words thereof, and the like offences, not by an equity to receive the punishment or pains, have sithence the making of the said law and statute, most wickedly devised and practised, for wicked lucre and gains-fake, other arts, undue ways and means, to falsify, impair, diminish, and lighten, as well the proper monies and coins of other realms allowed and suffered to be current within this realm and the dominions thereof by her majesty's proclamation, to the great damage, loss, hurt and deceit, as well of her majesty, as of all her faithful and loving subjects, and more is like hereafter to be practised and done, if the same be not speedily met withal; (4) For reformation and remedy whereof, be it enacted, declared, and established by authority of this present parliament, That if any person or persons, of what estate, degree, or condition soever he or they be, shall from and after the first day of *April* next coming, for wicked lucre or gains-fake, by any art, ways or means whatsoever, impair, diminish, falsify, scale, or lighten the proper monies or coins of this realm, or any the dominions thereof, or the monies or coins of this realm allowed and suffered to be current at the time of the offence committed within this realm of *England*, or any the dominions of the same, by the proclamation of the queen's majesty, her heirs or successors, shall be taken, adjudged, and deemed to be treason; (5) and the offenders therein, their counsellors, consenters, aiders, shall be likewise deemed and adjudged as offenders in treason, and being thereof lawfully convicted or attainted, according to the due order of the laws of this realm, shall suffer pains of death; (6) and lose and forfeit all their goods and chattels to the queen's majesty, her heirs and successors, and shall also lose and forfeit to the queen's highness, her heirs and successors, all their lands, tenements, and hereditaments, during his or their natural life or lives only.

*Sect. 2.* " Provided always, and be it enacted by the authority aforesaid, That this act, nor any thing therein contained, nor any attainder or attainders of any person or persons for any offence or offences made treason by this act, shall in any wise extend, or be judged, interpreted, or expounded to make any corruption of blood to any the heir or heirs of any such offender or offenders, or to make the wife of any such offender to lose or forfeit her dower, of or in any lands, tenements, or hereditaments, or her title, action, or interest to the same; any thing in this act contained, or any attainder or attainders hereafter to be had, for any offence or offences made treason by this act, to the contrary notwithstanding.

*Sect. 3.* " And be it further enacted by the authority aforesaid, That if any the lords of the parliament, or peer of this realm, for the time being, shall fortune at any time hereafter to be indicted of any offence made treason by this act, that then they and every of them shall have his or their

Other undue means practised to falsify the money, not within the strict word of the foresaid statute.

No corruption of blood or forfeiture of dower for this treason.

Trial of a peer by his peers.



their trial by their peers, as hath been used heretofore in cases of high treason. 25 *Ed. 3. stat. 4* & 5 c. 2. 1 *Ma. Seff. 2. c. 6.*

**Stat. 6 & 7 Will. 3. c. 17.** [*A. D. 1695. Intituled*] “An act to prevent counterfeiting and clipping the coin of this kingdom.”

“Whereas it is manifest that of late years the current coin of this kingdom hath been greatly diminished by clipping, rounding filing, and melting the same, and likewise many false and counterfeit coins have been clipped for the better disguising thereof: And for as much as it is apparent that these practices of diminishing the current coin is very much occasioned by those who drive a trade of exchanging broad money for clipped money, and by other arts and devices :

Penalty upon person selling or paying silver money for more than it is coined.

*Sect. 2.* “Be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, That from and after the first day of *May*, which shall be in the year of our lord one thousand six hundred ninety-five, if any person or persons whatsoever shall, at any one time or payment, exchange, send, sell, borrow, or buy, receive, or pay, any broad silver money, or silver money unclipped, of the coin of this kingdom, for more in tale, benefit, profit or advantage, than the same was coined for and ought by law to go for, be lent, sold for, borrowed or bought, received or paid, shall forfeit the sum of ten pounds for every twenty shillings that shall be so exchanged, lent sold for, borrowed or bought, received or paid, and so in proportion for any greater or lesser sum; one moiety thereof to his majesty, and the other moiety to the person who shall sue or inform for the same, to be recovered (with costs of suit) by action of debt, bill, plaint or information, wherein no privilege, protection, or wager of law shall be allowed, nor any more than one imparlance.”

Penalty for casting bars of silver, or stamping them like Spanish money.

*Sect. 3.* “And be it further enacted by the authority aforesaid, That no person do or shall presume to cast ingots or bars of silver, in imitation of *Spanish* bars or ingots of silver, nor do stamp any mark or impression upon any ingot or bar in likeness of the *Spanish* marks or impressions; upon pain that the person herein offending shall for every such offence forfeit the silver so cast, and also the sum of five hundred pounds; one moiety to his majesty, and the other to the informer, to be recovered as aforesaid.”

Punishment for buying or selling clippings, &c.

*Sect. 4.* “And for the better preventing the clipping, diminishing, or impairing the current coin of this kingdom, be it further enacted by the authority aforesaid, That if any person whatsoever shall buy or sell, and knowingly have in his custody or possession, any clippings or filings of the current coin of this kingdom, he shall for every such offence forfeit the said clippings or filings, and also the sum of five hundred pounds; one moiety to his majesty, and the other to the informer, to be recovered as aforesaid, and shall be also branded in the right cheek with a hot iron with the letter *R.* and until payment of the said five hundred pounds shall suffer imprisonment.”

*Sect. 5.* " And be it further enacted, That no goldsmith, or other person whatsoever shall, from and after the said first day of *May*, transport or cause to be transported, out of this kingdom of *England* into any parts beyond the seas, any molten silver whatsoever, but such only as shall be marked or stamped at *Goldsmiths-hall* by the wardens, some or one of them, belonging to the said company of goldsmiths, which mark or stamp the said wardens are hereby required to provide, and therewith to mark or stamp all such silver as shall be proved before them, or one of them, in such manner as is hereafter mentioned, to be lawful silver; nor unless a certificate be first had and obtained under the hand of one or more of the said wardens, of oath having been made before him or them by the owner or owners of such molten silver, and likewise by one credible witness, that the same is lawful silver, and that no part thereof was (before the same was molten) the current coin of this realm, nor clippings thereof, nor plate wrought within this kingdom; which oath the said wardens, or any one of them, are and is hereby required and authorized to administer, and likewise to make and grant a certificate thereof without fee or reward, an entry of which certificate shall be duly made, by the said wardens, in a book to be kept for that purpose; and in case any person whatsoever, who shall offer any molten silver to be marked, as is aforesaid, shall not prove by his or her oath, and likewise by the oath of one credible witness, that the silver offered to be marked is lawful silver, and that the same was not, before the melting thereof, the current coin of this kingdom, nor clippings thereof, nor plate wrought within the same, then and in every such case it shall be lawful to and for the said wardens, or any one of them, to seize and detain such molten silver so offered to be marked, until such time as such oath and proof shall be made, as is aforesaid.

*Sect. 6.* " And be it further enacted, That if any person whatsoever shall ship, or cause to be shipped or put on board any vessel, any molten silver not stamped or marked by the said wardens, or one of them, and without certificate first obtained, of oath having been made before the said wardens, or one of them, of the lawfulness of such silver, in manner as is aforesaid (which certificate shall be shewn to some one of the commissioners of the customs, for the time being, before any cocket be granted for the exporting such molten silver) in such case it shall and may be lawful to and for any officer or officers of his majesty's customs to seize such silver so shipped and put on board; one moiety whereof shall be to his majesty, his heirs and successors, and the other moiety to the officer and officers so seizing the same.

*Sect. 7.* " And be it further enacted, That if any broker or brokers, not being a trading goldsmith or refiner of silver, shall buy or sell any bullion or molten silver, every such person shall suffer, for every such offence, imprisonment for six months without bail or mainprize.

*Sect. 8.* " And for the better discovery of offenders in the premises, be it further enacted by the authority aforesaid, That it shall and may be lawful to and for one or more of the wardens of the said company of goldsmiths, with any two or more of the court of assistants of the said company,

No person shall transport bullion, except it be stamped at Goldsmiths-hall.

Bullion not stamped may be seized by customhouse officers.

Goldsmiths only to buy and sell bullion.

What persons may break open houses, and search for bullion.

Person, in whose possession bullion is found, not proving it to be neither coin, nor clippings melted, to be imprisoned six months.

Persons apprehending and convicting clippers, &c. shall, upon the judge's certificate, receive 40*l.* of the sheriff.

company, within the compass of the weekly bills of mortality, and to and for any two justices of the peace within any county, city, or town corporate, out of the compass of the weekly bills of mortality, to enter into the house, room or workshop of any person who shall be suspected to be guilty of buying or selling unlawful bullion, and to search for the same; and in case the occupier or occupiers of such house, room or workshop shall refuse to permit the said warden and assistants or justices to make such search, as aforesaid, it shall and may be lawful to such warden and assistants, and justices, with the assistance of a constable, to break open any door, box, trunk, chest, cupboard or cabinet in order to search for and discover such bullion, as is aforesaid; and in case the persons so searching shall at any time find any such unlawful bullion, the persons so finding the same are hereby required to seize, as well such bullion as the person and persons in whose possession the same shall be found; and the said wardens, assistants and constables, shall bring him and her before the next justice of the peace, who upon oath made of such finding (which justice within the weekly bills of mortality, and the said two justices without the said bills of mortality, are to administer) shall and may examine the person so brought before him, or found by them, respectively, upon oath, whether the bullion so found be lawful silver, and whether the same was not (before the melting thereof) the current coin of this realm, or clippings thereof; and in case the said person so examined shall not prove by his or her oath, or by the oath of one credible witness before the said justice and justices respectively, that the bullion so found is lawful silver, and that the same was not, before the melting thereof, the current coin of this realm, nor clippings thereof, then and in such case the said justice or justices respectively shall commit the person so examined to prison, and shall secure the bullion so found, and shall likewise oblige the persons that can give any evidence concerning the same, to enter into a recognizance to prosecute the said offender and offenders; and in case such offender and offenders, in whose possession such unlawful bullion shall be found, shall not, upon his, her, or their trials on an indictment for melting the current silver coin of this realm, prove, by the oath of one credible witness at the least, the bullion so found to be lawful silver, and that the same was not the current coin of this realm, nor clippings thereof, then and for want of such proof, such offender shall be found guilty of the offence contained in such indictment, and shall suffer imprisonment for the space of six months, without bail or mainprize.

*Stat. 9.* "And whereas the coin of this realm is of late much clipped and counterfeited for want of due encouragement to be given to such persons as shall discover the same; Be it enacted by the authority aforesaid, That, from and after the said first day of *May* one thousand six hundred ninety-five, all and every person and persons, who shall apprehend and take any person or persons, who have counterfeited any of the current coin of this realm, or that for lucre or gain have clipped, washed, filed, or any ways diminished the same, or shall bring, or cause to be

be brought, into this kingdom, the dominion of *Wales*, or town of *Berwick upon Tweed*, any clipt, false, or counterfeit coin, and prosecute such person or persons, until he, she or they be convicted for any such offence, shall have and receive from the sheriff or sheriffs of the county, where such conviction shall be made, for every such offender so convicted, the sum of forty pounds (without paying any fee for the same) within one month after such conviction and demand thereof made, by tendering a certificate to the said sheriff or sheriffs for the time being, under the hand or hands of the judge or justices before whom such traitor or traitors, offender or offenders, as aforesaid, shall be convicted, certifying the conviction of such traitor or traitors done within the county of the said sheriff or sheriffs; and that such traitor or traitors was or were taken and prosecuted by the person or persons claiming the said reward, which certificates, as aforesaid, the judge or justices are hereby required to give: And in case any dispute shall happen to arise between the persons apprehending and prosecuting to conviction such traitors, as aforesaid, touching their right and title to the said reward, that then the said judge or justices so respectively certifying, as aforesaid, shall in and by their said certificate direct and appoint the said reward to be paid unto and amongst the parties claiming the same, in such share and proportions as to the said judge or justices shall seem just and reasonable: And if default of payment of the said sum or sums of money shall happen to be made by any sheriff or sheriffs, such sheriff or sheriffs so making default, shall forfeit to the person or persons, to whom such money is due, as aforesaid, double the sum or sums of money he ought to have paid, to be recovered by him or them, or his or their executors or administrators, in any of his majesty's courts of record at *Westminster*, by action of debt, bill, plaint or information, wherein but one imparlance, and no essoin, protection, or wager of law, shall be allowed, with treble costs of suit by him or them expended in recovery of the same.

*Sect. 10.* " And it is hereby further enacted, That all sheriffs, their executors, or administrators, upon producing such respective certificates, and the receipts for the money by them paid in pursuance of this act, shall be allowed, and are hereby impowered to deduct, upon their accounting with his majesty, all monies (other than the double sum and sums of money and costs of suit) which they shall disburse, as aforesaid, without any fee or reward whatsoever.

*Sect. 11.* " Provided always, That if, upon the account of any sheriff or sheriffs, there shall not be money sufficient in the hands of such sheriff or sheriffs to reimburse him or them such monies paid by him or them by virtue of this act, that then the sheriff or sheriffs, having so paid the said monies, shall have the same repaid by the lord treasurer or commissioners of his majesty's treasury for the time being, out of the revenue of the crown, upon certificate from the clerk of the Pipe to that effect.

Sheriff not paying shall forfeit double to the apprehenders.

Sheriff to be allowed the 40 l. in his accounts, and if not sufficient in his hands, to be repaid by the treasury.

By 3 Geo. 1. c. 15. § 4. the sheriff may apply to the lord treasurer.

Person guilty,  
on convicting  
two others  
pardoned.

Apprentice  
discovering,  
made a free-  
man.

Proof of so-  
vereign bullion to  
lie upon the  
owner, &c.

Penalty upon  
exporter not  
entering in  
name of  
owner, &c.

Certain quanti-  
ty of bullion  
exported by  
the king saved.

All coining  
presses not  
brought into  
the mint to be  
seized.

*Sect. 11.* "And be it further enacted by the authority aforesaid, That if any person or persons, being out of prison, shall, from and after the said first day of *May* one thousand six hundred ninety-five, be guilty of clipping, coining, counterfeiting, washing, filing or otherwise diminishing the coin of this realm, and afterwards discover two or more person or persons, who already have or hereafter shall commit any of the said crimes, so as two or more of the person or persons discovered shall be convicted of the same, any such discoverer shall himself have, and is hereby intitled to, the gracious pardon of his majesty, his heirs, and successors, for all such his crimes which he or they have committed at any time or times before such discovery made: And if the person making such discovery be an apprentice, he shall be deemed and taken, and is hereby declared a freeman, and shall have, and may exercise any lawful trade, profession, or mystery, with all liberties and privileges, and in as full and ample manner, as if the said person had served the full time of his apprenticeship; any law or statute, custom or ordinance to the contrary notwithstanding."

*Sect. 13.* "And be it further enacted by the authority aforesaid, That in case any seizure shall happen of any bullion shipped to be exported, and a doubt arise thereon, whether the same be *English* or foreign bullion, that then the proof shall lie upon the owner, claimer or exporter of such bullion, that the same is foreign bullion, and had not been melted down in this realm of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed*."

*Sect. 14.* "And be it further enacted by the authority aforesaid, That in case any person or persons enter or ship any bullion, allowed by this act to be exported beyond the seas, other than in the name of the true owner and proprietor or importer, the exporter thereof shall forfeit the same, or the full value thereof; one moiety to his majesty, his heirs and successors, and the other moiety to the person who shall seize or discover the same."

*Sect. 15.* "Provided always, and be it further enacted, That this act, or any thing therein contained, shall not extend to prohibit the exportation of such bullion as shall be licensed by his majesty (such licences being entered in the books of the custom-house for the port of *London*) so as the same be exported before the first day of *January* one thousand six hundred ninety-five, and do not exceed seven hundred thousand ounces of silver to be applied for the payment of his majesty's forces."

*Stat. 7 & 8 Will. 3. c. 19.* [*A. D. 1696.*] *made among other purposes,* "for remedying the ill state of the coin of the kingdom."

*Sect. 4.* "And forasmuch as the greatest security against counterfeiting the new intended coin of this realm by the mill and press, is the difficulty of being provided with fit tools and instruments for doing thereof; Be it enacted by the authority aforesaid, That if any person or persons whatsoever (other than the officer or officers of his majesty's mint or mints) now having, or which at any time hereafter, before the first day of *March*, which shall be in the year of our lord one thousand six hundred ninety-five, shall have in his custody or possession any press or presses which may be made use of for coinage, if such person or persons do or shall, on or before the  
third

third day of *May*, which shall be in the year of our lord one thousand six hundred ninety-six, bring and deliver the same to the officer or officers of his majesty's mint at the tower of *London*, every such person shall, at the time of the delivery thereof, receive from the said officer or officers at the mint the full value which such prefs or presses first cost, and the charge of carriage; and if at any time after the said third day of *May*, any prefs for <sup>Penalty</sup> coinage shall be found in the custody of any person whatsoever (other than the officers of his majesty's mint or mints) such prefs shall be seized for his majesty's use; and every person, in whose custody such prefs shall be so found after the said third day of *May*, shall forfeit the sum of five hundred pounds; the one moiety thereof to be to his majesty, and the other moiety thereof to the informer, to be recovered by action of debt, bill plaint, or information, in any of his majesty's courts wherein no essoign, protection, wager of law, or imparlance, shall be allowed."

**Stat. 8 & 9 Will. 3. c. 26.** [*A. D.* 1697. *Intituled*] "An act for the better preventing the counterfeiting the current coin of this kingdom."

"Whereas, notwithstanding the good laws still in force against the counterfeiting of the monies and coins of this realm, yet the said offence doth and is like daily to increase, to the manifest wrong and injury both of his majesty and all his loving subjects, being very much occasioned for want of a due and condign punishment to be inflicted upon such artificers and others, who without any lawful authority do make or use puncheons, stamps, dyes, and other engines and instruments, which are commonly used, or may be made use of, in or about the coining of money: for redress of which so great and growing a mischief, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the fifteenth day of *May* one thousand six hundred ninety-seven, no smith, engraver, founder, or other person or persons whatsoever (other than and except the persons employed, or to be employed, in or for his majesty's mint or mints in the tower of *London*, or elsewhere, and for the use and service of the said mints only, or persons lawfully authorized by the lords commissioners of the treasury, or lord high treasurer of *England*, for the time being) shall knowingly make or mend, or begin or proceed to make or mend, or assist in the making or mending of any puncheon, counter puncheon, matrix, stamp, dye, pattern, or mould of steel, iron, silver, or other metal or metals, or of spaud, or fine founderseath, or sand, or of any other materials whatsoever, in or upon which there shall be, or be made or impressed, or which will make or impress, the figure, stamp, resemblance, or similitude of both or either of the sides or flats of any gold or silver coin, current within this kingdom, nor shall knowingly make or mend, or begin or proceed to make or mend, or assist in the making or mending of any edger or edging tool, instrument, or engine, not of common use in any trade, but contrived for making of money round the edges with letters, grainings, or other marks or figures resembling those on the edges of money coined in his majesty's mint, nor

No smith, &c. except employed in the mint, &c. shall make or mend any dye, &c. to stamp any current coin of gold or silver, nor make any edging tool, &c. nor coining prefs, nor cutting engine, nor have in their custody any such puncheon, &c.

Offenders, &c.  
guilty of high  
treason, and  
shall suffer  
death.

any press for coinage, nor any cutting engine, for cutting round blanks by force of a screw out of flatted bars of gold, silver or other metal, nor shall knowingly buy or sell, hide or conceal, or without lawful authority, or sufficient excuse for that purpose, knowingly have in his, her or their houses, custody or possession, any such puncheon, counter puncheon, matrix, stamp, dye, edger, cutting engine, or other tool or instrument before-mentioned; and if any smith, engraver, founder, or other person or persons whatsoever (other than and except as aforesaid) shall offend in any the matters or things aforesaid, then all and every such offender and offenders, their counsellors, procurers, aiders and abettors, shall be and is and are hereby adjudged to be guilty of high treason, and being of the said offences or any of them convicted or attainted, according to the order and course of the laws of this realm, shall suffer death as in the case of high treason.

Persons conveying out of the mint any puncheon, &c. and concealing the same, to be guilty of high treason.

*Sect. 2.* " And be it further enacted by the authority aforesaid, That if any person or persons whatsoever, from and after the said fifteenth day of *May*, shall without lawful authority for that purpose wittingly or knowingly convey or assist in the conveying out of his majesty's mint in the *Tower of London*, or out of any other of his majesty's mints, any puncheon, counter puncheon, matrix, dye, stamp, edger, cutting engine, press or other tool, engine or instrument used for or about the coining of monies there, or any useful part of such tools or instruments, that then as well the said person and persons so offending, their counsellors, procurers, aiders or abettors, as also all and every person and persons knowingly receiving, hiding or concealing the same, shall be and is, and are hereby adjudged to be guilty of high treason, and being of the said offences or any of them convicted or attainted, according to the order and course of the laws of this realm, shall suffer death as in case of high treason.

Like penalty on persons marking the edges of any counterfeit coin,

*Sect. 3.* " And be it further enacted by the authority aforesaid, That if any person or persons (other than the persons employed in his majesty's mint or mints, or such as shall have authority from the lords commissioners of the treasury, or lord high treasurer of *England*, for the time being) shall, after the said fifteenth day of *May*, mark on the edges any the current coin of this kingdom, or if any person or persons whatsoever shall mark on the edges any of the diminished coin of this kingdom, or any counterfeit coin resembling the coin of this kingdom, with letters or grainings, or other marks or figures like unto those on the edges of money coined in his majesty's mint; every such offence shall be and is hereby adjudged to be high treason, and the offender and offenders therein, his and their counsellors, procurers, aiders and abettors, being thereof convicted or attainted according to the order and course of the laws of this realm, shall suffer death as in case of high treason.

or colouring, gilding, &c. any coin resembling the current coin.

*Sect. 4.* " And be it further enacted by the authority aforesaid, That if any person or persons whatsoever, after the said fifteenth day of *May*, shall colour, gild, or case over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin resembling any

any the current coin of this kingdom, or any round blanks of base metal or of coarse gold or coarse silver of a fit size and figure to be coined into counterfeit milled money, resembling any the gold or silver coin of this kingdom; or if any person or persons shall gild over any silver blanks of a fit size and figure to be coined into pieces resembling the current gold coin of this kingdom; all and every such person and persons so offending, their counsellors, procurers, aiders and abettors, shall be and is and are hereby adjudged to be guilty of high treason, and being convicted or attainted thereof, according to the order and course of the laws of this realm, shall suffer death as in case of high treason.

*Sect. 5.* "And be it further enacted by the authority aforesaid, That if any puncheon, dye, stamp, edger, cutting engine, press, flask or other tool, instrument or engine, used or designed for coining or counterfeiting gold or silver monies, or any part of such tool or engine, shall, at any time after the said fifteenth day of *May*, be hid or concealed in any place, or found in the house, custody or possession of any person or persons whatsoever, not then employed in the coining of money in some of his majesty's mints, nor having the same by some lawful authority, that then it shall and may be lawful to and for any person or persons whatsoever, discovering the same, to seize, and he and they are hereby required to seize the same, and to carry them forthwith to some justice of peace of the county, city, or place where the same shall be so seized and by him secured, to be produced in evidence against any person or persons who shall or may be prosecuted for any such offence, in some court of justice proper for the determination thereof; and after such time as they or any of them shall have been produced in evidence, as well the same so produced as the other so seized, and not made use of in evidence, and every of them, shall forthwith, by order of that court where such offender or offenders shall be tried, or by order, and in the presence of such or some other justice of the peace, in case there be no such trial, be totally defaced and destroyed; and if, after the said fifteenth day of *May*, any counterfeit or unlawfully diminished money shall be produced in any court of justice, either in evidence against any person or persons for any offence relating to the counterfeiting or unlawfully diminishing of money, or otherwise, that then, or immediately after evidence given, the judge or judges of such court shall cause such monies to be cut in pieces in open court, or in the presence of some justice of the peace, and then to be delivered to or for such person or persons to whom the same of right shall appertain.

*Sect. 6.* "And whereas several mixtures of metals have been invented in imitation of gold and silver, and blanching copper is principally made use of in imitation of silver, and seldom, if ever, for any honest or good purpose: Be it further enacted by the authority aforesaid, That if any person or persons whatsoever, after the said fifteenth day of *May*, shall blanch copper for sale, or mix blanching copper with silver, or knowingly buy or sell, or offer to sale, blanching copper alone, or mixed with silver, or shall knowingly and fraudulently buy or sell, or offer to sale, any malleable composition or mixture of metals or minerals, which shall be heavier than silver, and look, and touch, and wear like standard gold, but

Puncheon, dye, &c. found in the possession of any person not employed in the mints, may be seized and produced in evidence.

Counterfeit money, &c. produced in evidence or otherwise, to be afterwards cut in pieces.

Persons blanching copper for sale, or mixing blanching copper with silver, &c. or taking or paying counterfeit milled money, &c.

be



be manifestly worse than standard, or shall take, receive, pay, or put off any counterfeit milled money, or any milled money whatsoever unlawfully diminished, and not cut in pieces, at or for a lower rate or value than the same by its denomination doth or shall import, or was coined or counterfeited for, that then all and every such person and persons shall be deemed and adjudged guilty of felony, and, being thereof convicted or attainted, according to the order and course of the laws of this realm, shall suffer death as in case of felony.

to be guilty of felony.

Attainder by this act not to make corruption of blood, &c.

By what evidence offenders may be convicted.

*Seet. 7.* "Provided always, and be it enacted by the authority aforesaid, That this act, or any thing therein contained, or any attainder or attainders of any person or persons for any offence or offences made treason or felony by this act, shall not in any wise extend, or be judged, interpreted, or expounded to make any corruption of blood to any the heir or heirs of any such offender or offenders, or to make the wife of any such offender to lose or forfeit her dower of or in any lands, tenements, or hereditaments, or her title, action, or interest in the same; and that all and every person or persons that shall, at any time after the said fifteenth day of *May*, be accused or impeached of any the offences made treason or felony by this act, shall or may be indicted, arraigned, tried, convicted, or attainted, by such like evidence, and in such manner and form, as now are, or may by the laws of this realm be had or used against any offender or offenders for counterfeiting the king's money; any thing in this act contained, or any other law or statute to the contrary notwithstanding.

Offences in 6 & 7 W. 3. c. 17. may be heard in the King's Bench, or at a Gaol delivery. Prosecution to be in three months.

By 9 & 10 W. 3. c. 21. *sect. 1.* any person may deface counterfeit money.

*Seet. 8.* "And for the rendring more effectual an act made in the sixth and seventh years of his majesty's reign, intituled, *An act to prevent counterfeiting and clipping the coin of this kingdom*: Be it enacted by the authority aforesaid, That all and every the crimes and offences, specified and mentioned in the said act, may be heard and determined upon indictment or presentment either in his majesty's court of *King's Bench*, or before the justices of *Oyer and Terminer*, or justices of *Assize*, or general Gaol delivery.

*Seet. 9.* "Provided always, and be it enacted, That this act shall continue and be in force until the end of the next session of parliament, and no longer; and that no prosecution shall be made for any offence against this act, unless such prosecution be commenced within three months after such offence committed. This act made perpetual by 7 *Annæ*, c. 25. *sect. 3.* and by *sect. 2.* the makers or menders of tools are to be prosecuted within six months.

**Stat. 9 & 10 W. 3. c. 24. [A. D. 1698. Intituled]** "An act for the better preventing the counterfeiting, clipping, and other diminishing the coin of this kingdom."

"Whereas the preventing the currency of clipt and unlawfully diminished, and counterfeit money, is a more effectual means to preserve the coin of this kingdom intire and pure, than the most rigorous laws for the punishment

punishment of such as diminish or counterfeit the same: And whereas by the known laws of this kingdom no person ought to pay, or knowingly tender in payment, any counterfeit or unlawful diminished money, and all persons not only may refuse to receive the same, but may, and by the ancient statutes and ordinances of this kingdom, have been required to destroy and deface the same, and more especially the tellers in the receipt of the *Exchequer*, by their duty and oath of office, are required to receive no money but good and true: And to the end the same might the better be discerned and known, by the ancient course of the said receipt of the *Exchequer* all money ought to be received there by weight as well as tale: For the restoring of which course, together with other things, an act was made in the last session of this present parliament, intituled, *An act for 8 & 9 W. 3. the better observation of the course anciently used in the receipt of the Exchequer*, whereby amongst other things it is enacted, That the respective tellers of the said receipt of the *Exchequer*, when any money shall be brought to the said receipt of the *Exchequer*, to be there paid, shall without delay receive it, weighing the same in intire sums or otherwise, and making due entry of the weight and tale thereof, according to the ancient course; but no provision is made in the said act, that the said tellers shall refuse to receive the said money, in case it shall not be of its due weight, and the former and ancient laws being grown into desuetude, whereby unlawfully diminished and counterfeit money receive a currency, and wicked and traitorous persons are encouraged to diminish and counterfeit the same: Now to the end the kingdom, after so vast a charge and expence for the reformation of the silver coin, and restoring it to its due weight and purity, may not relapse into the same evil, from which it hath been so lately delivered with great difficulty and hazard, and that counterfeit and unlawfully diminished money, which already begins to increase, may be defaced and destroyed; Be it declared and enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by authority of the same, That it is and shall be lawful to and for any person, to whom any silver money shall be tendred, any piece or pieces whereof shall be diminished, otherwise than by reasonable wearing, or that by the stamp, impression, colour, or weight thereof, he shall suspect to be counterfeit, to cut, break, or deface such piece or pieces; and if any piece so cut, broken, or defaced, shall appear to be counterfeit, the person tending the same shall bear the loss thereof; but if the same shall be of due weight, and appear to be lawful money, the person that cut, broke, or defaced the same, shall, and is hereby required to take and receive the same at the rate it was coined for; and if any question or dispute shall arise, whether the piece so cut be counterfeit, it shall be heard, and finally determined by the mayor, bailiff, or bailiffs, or other chief officer of any city or town corporate, where such tender shall be made; and if such tender shall be made out of any city or town corporate, then by the next justice of the peace of the county, inhabiting or being near the place

Any person  
may cut or  
deface dimi-  
nished or  
counterfeit  
money.

Person ten-  
dring such  
money to bear  
the loss, &c.

Mayor, &c.  
to determine  
disputes,

place where such tender shall be made; and the said mayor, or other chief officer, and justice of the peace, shall have full power and authority to administer an oath, as he shall see convenient, to any person for the determining any questions relating to the said piece.

Officers of the *Exchequer*, receivers general, &c. required to cut such money so tendred, &c. *Sect. 2.* "And be it further enacted by the authority aforesaid, That the tellers of the receipt of *Exchequer*, and their deputies and clerks, and the receivers general of every branch of his majesty's revenue, aids, impositions, duties, and taxes, given or granted, or to be hereafter given or granted, shall and are hereby required to cut, break or deface, or cause to be cut, broken or defaced, every piece of counterfeit, or unlawfully diminished silver money, that shall be tendred in payment to them to the use of his majesty, his heirs or successors, or for any part of the revenue, aids, impositions, duties or taxes of his majesty, his heirs or successors; and the better to discover silver money that is counterfeit, or unlawfully diminished, from that which is good and true, the tellers and receivers general, and their respective deputies and clerks, shall weigh in whole sums, or otherwise, all silver money by them received; and if the same, or any piece thereof, shall, by the weight or otherwise, appear to be counterfeit, or unlawfully diminished, the same shall not be received by or from them in the said receipt of the *Exchequer*, nor be allowed them upon their respective accounts.

8 & 9 W. 3. c. 26. continued. *Sect. 3.* "And be it further enacted by the authority aforesaid, That an act made the last session of this present parliament, intituled, *An act for the better preventing the counterfeiting the current coin of this kingdom*, and every article and clause therein contained, shall from henceforth continue and be of force until the five and twentieth day of *March*, which shall be in the year of our Lord one thousand seven hundred and one, and from thence to the end of the next session of parliament."

**Stat. 1 Ann. stat. 2. c. 9.** [*A. D. 1701. Intituled*] "An act for continuing the act made in the eighth year of his late majesty's reign, for better preventing the counterfeiting the current coin of this kingdom."

9 W. 3. c. 21. "Whereas an act of parliament made in the eighth year of his late majesty's reign, intituled, *An act for the better preventing the counterfeiting the current coin of this kingdom*, was, by a clause in another act made in the ninth year of his said majesty's reign, continued in force to the five and twentieth day of *March* one thousand seven hundred and one, and from thence to the end of the next session of parliament: And whereas the said act hath been found of good use for suppressing the counterfeiting the current coin of this kingdom, by such tools and instruments as are therein prohibited: Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this parliament assembled, and by the authority of the same, That the said act made in the eighth year of his late majesty's

majesty's reign, and every article and clause therein contained, shall from henceforth continue and be in force until the five and twentieth day of *March*, which shall be in the year of our lord one thousand seven hundred and nine, and from thenceforth unto the end of the first session of parliament then next ensuing, and no longer.

*Sect. 2.* "And whereas in the aforesaid act it is ordained, That no prosecution shall be made for any offence against the said act, unless such prosecution be commenced within three months after such offence committed: Be it further enacted by the authority aforesaid, That the prosecution of such person or persons as offend against the said act, by making or mending, or beginning or proceeding to make or mend any coining tool or instrument therein prohibited, or by marking of money round the edges with letters or grainings, may be commenced at any time within six months after such offence committed; any thing in the said act to the contrary in any wise notwithstanding.

Offenders may be prosecuted in six months after offence.

*Stat. 7 Ann. c. 23. [A. D. 1708.] made, among other purposes, "for prosecuting offences concerning the coin in England."*

*Self. 4.* "Provided always, and it is hereby enacted by the authority aforesaid, That (over and above the sums not exceeding three thousand pounds *per annum*, and five hundred pounds *per annum*, mentioned in the said former acts, for the uses of the mint) it shall and may be lawful to and for the lord high treasurer of *Great Britain*, and the under treasurer, or the commissioners of the treasury, for the time being, by orders or warrants, to issue out of the *Exchequer*, or dispose of the monies arising by the said coinage duty, yearly and every year, from and after the first day of *June* one thousand seven hundred and nine, any sum or sums not exceeding the yearly sum of four hundred pounds, for the charges and expences of the officers, and others employed and to be employed in the prosecution of offences in counterfeiting, diminishing, or otherwise concerning the current coins of *Great Britain*, in that part thereof called *England*; and any officer or officers employed, as aforesaid, may have and receive the said sum not exceeding four hundred pounds, or any part thereof, without being liable to any forfeiture, disability, or incapacity whatsoever; the said recited acts, or any other law, statute, or usage to the contrary notwithstanding."

After 1 June 1709, the lord treasurer, &c. may further issue, &c. 400l. per annum, for the charges of officers, to be employed in prosecuting offences in counterfeiting, &c. the coin of Great Britain.

*Stat. 15 Geo. 2. c. 28. [A. D. 1742. Intituled]* "An act for the more effectual preventing the counterfeiting of the current coin of this kingdom, and the uttering or paying of false or counterfeit coin."

"Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person whatsoever shall, after the twenty-ninth day of *September* in the year of our lord one thousand seven hundred and forty-two,

High treason  
to gild silver  
coin, &c.

wash, gild, or colour any of the lawful silver coin called a *shilling* or a *sixpence*, or any counterfeit or false shilling or sixpence, or add to or alter the impression, or any part of the impression, of either side of such lawful or counterfeit shilling or sixpence, with intent to make such shilling resemble or look like, or pass for a piece of lawful gold coin called a *guinea*, or with intent to make such sixpence resemble or look like, or pass for a piece of lawful gold coin called an *half guinea*; or shall file, or any ways alter, wash, or colour any of the brass monies called *half-pennies* or *farthings*, or add to or alter the impression, or any part of the impression of either side of an halfpenny or farthing, with intent to make an halfpenny resemble or look like, or pass for a lawful shilling, or with intent to make a farthing resemble or look like, or pass for a lawful sixpence, the person and persons so offending, in any of the matters aforesaid, their counsellors, aiders, abettors and procurers shall be, and is and are hereby adjudged to be guilty of high treason.

Uttering false  
money know-  
ingly, six  
months im-  
prisonment, and  
security for  
two years  
more.

For the second  
offence, two  
years im-  
prisonment, and  
security for  
two years.

For the third  
offence, felo-  
ny, without  
clergy.

*Sect. 2.* "And whereas the uttering of false money, knowing it to be false, is a crime frequently committed all over the kingdom, and the offenders therein are not deterred, by reason that it is only a misdemeanor, and the punishment very often but small, though there be great reason to believe, that the common utterers of such false money are either themselves the coiners, or in confederacy with the coiners thereof: For preventing whereof, be it hereby further enacted by the authority aforesaid, That if any person whatsoever shall, after the said twenty-ninth day of *September*, utter or tender in payment any false or counterfeit money, knowing the same to be false or counterfeit, to any person or persons, and shall be thereof convicted, such person so offending shall suffer six months imprisonment, and find sureties for his or her good behaviour for six months more, to be computed from the end of the said first six months; and if the same person shall afterwards be convicted a second time of the like offence of uttering or tendering in payment any false or counterfeit money, knowing the same to be so, such person shall, for such second offence, suffer two years imprisonment, and find sureties for his or her good behaviour for two years more, to be computed from the end of the said first two years; and if the same person shall afterwards offend a third time in uttering or tendering in payment any false or counterfeit money, knowing the same to be so, and shall be convicted of such third offence, he or she shall be and is hereby adjudged to be guilty of felony, without benefit of clergy.

Uttering false  
money twice  
within ten  
days;

*Sect. 3.* "And it is hereby further enacted by the authority aforesaid, That if any person whatsoever shall, after the said twenty-ninth day of *September*, utter or tender in payment, any false or counterfeit money, knowing the same to be false or counterfeit, to any person or persons, and shall either the same day, or within the space of ten days then next, utter or tender in payment any more or other false or counterfeit money, knowing the same to be false or counterfeit, to the same person or persons, or to any other person or persons, or shall at the time of such uttering

uttering or tendering have about him or her, in his or her custody, one or more piece or pieces of counterfeit money, besides what was so uttered or tendered, then such person so uttering or tendering the same, shall be deemed and taken to be a common utterer of false money, and being thereof convicted, shall suffer a year's imprisonment, and shall find sureties for his or her good behaviour for two years more, to be computed from the end of the said year; and if any person having been once so convicted as a common utterer of false money, shall afterwards again utter or tender in payment any false or counterfeit money to any person or persons, knowing the same to be false or counterfeit, then such person being thereof convicted, shall for such second offence be, and is hereby adjudged to be guilty of felony without benefit of clergy." or having other false money in custody, to suffer a year's imprisonment, &c. Subsequent offence, felony, &c.

*Stat. 4.* "And it is hereby further enacted by the authority aforesaid, That the person or persons convicted of any of the treasons and felonies respectively herein before mentioned, shall suffer death as in case of high treason and felony respectively; but the blood of the heirs of such offender shall not be thereby corrupted, nor shall his wife thereby forfeit or lose her dower out of or in his lands or real estate. Blood not to be corrupted.

*Stat. 5.* "And it is hereby further enacted, That the person and persons that shall be guilty of any of the treasons, felonies or crimes aforesaid, shall be indicted, arraigned, tried, and convicted by such like evidence, and in such manner as is now used and allowed against any offenders for counterfeiting the lawful coin, provided that there shall be no prosecution for any of the offences made treason or felony by this act, unless such prosecution be commenced within six months next after such offence shall be committed." Evidence to be the same as now used against counterfeiting the coin.

*Stat. 6.* "And whereas the coining or counterfeiting any of the copper money of this kingdom is only a misdemeanor, and the punishment often very small; be it hereby further enacted by the authority aforesaid, That if any person whatsoever shall, after the said twenty-ninth day of *September*, make, coin or counterfeit any brass or copper money, commonly called a *halfpenny*, or a *farthing*, such person offending therein, and his, her and their aiders, abettors and procurers being thereof convicted, shall suffer two years imprisonment, and find sureties for his or her good behaviour for two years more, to be computed from the end of the said first two years." Coiners of copper money to be imprisoned two years.

*Stat. 7.* "And it is hereby further enacted, That whoever shall, after the said twenty-ninth day of *September*, apprehend any person or persons who have committed any of the offences hereby made high treason or felony, or who shall have made or counterfeited any of the copper money aforesaid, and shall prosecute such offenders, until he, she or they shall be thereof convicted, such prosecutor and prosecutors shall have and receive from the sheriff or sheriffs of the county or city, where such conviction shall be made, for every such offender so convicted of any of the treasons or felonies aforesaid, the sum of forty pounds; and for every person so convicted of counterfeiting any of the said copper money, the sum of ten pounds," 40 l. for convicting a person of treason and felony; And 10 l. for convicting a person of

counterfeiting coppermoney. pounds, without paying any fee for the same, within one month after such conviction, and demand thereof made, by tendering a certificate to the said sheriff or sheriffs for the time being, or his or their under-sheriff, under the hands of the judge or justices before whom such conviction shall have been made, certifying such conviction, and that the offender or offenders were apprehended and prosecuted by the persons claiming the said reward, and thereby directing in what shares and proportions the said reward shall be paid and divided to and amongst such prosecutor or prosecutors; which certificate the said judge or justices are hereby required to give without delay or fee; and if the said sheriff or sheriffs shall not pay the said reward accordingly, within the time aforesaid, he or they shall forfeit to prosecutor and prosecutors severally, double the sum which by the said certificate shall be directed to be severally paid to them, to be recovered by him, her or them, or his, her or their executors or administrators, in any of his majesty's courts of record at *Westminster*, by action of debt, bill or information, with treble costs of suit, expended or paid in recovering the same; and such sheriff or sheriffs shall be allowed, or may deduct such rewards, upon his or their accounting with his majesty, without any fee to be paid in respect thereof; and if he or they shall not on passing such account have money sufficient in his or their hands to answer what shall have been paid for such rewards, then the same shall be repaid by the lord treasurer, or commissioners of the treasury for the time being, out of the revenues of the crown, on certificate for that purpose, from the clerk of the pipe."

Certificate to be given by the judge.

Penalty on the sheriffs not paying the reward.

Sheriff to be allow'd such payments in his accounts, &c.

If offenders, being out of prison, impeach two others, they shall be pardoned.

Manner of prosecuting a second offence in another county.

*Señ. 8.* "And be it hereby further enacted by the authority aforesaid, that whoever being out of prison shall, after the said twenty-ninth day of *September*, commit any of the offences aforesaid, and shall afterwards discover two or more persons, who shall, after the time aforesaid, have committed any of the said offences, so as such two or more persons shall be thereof convicted, such discoverer shall have, and is hereby intitled to his majesty's most gracious pardon for such his or her offences."

*Señ. 9.* "And be it hereby further enacted, That if any person shall be convicted of uttering or tendering any false or counterfeit money as aforesaid, and shall afterwards be guilty of the like offence, in any other county or city, the clerk of the assize, or clerk of the peace for the county or city where such first conviction was so had, shall at the request of the prosecutor, or any other on his majesty's behalf, certify the same by a transcript in few words, containing the effect and tenor of such conviction; for which certificate two shillings and sixpence, and no more, shall be paid; and such certificate being produced in court, shall be sufficient proof of such former conviction."

7 Annæ, c 24. sect 4.

*Señ. 10.* "And whereas by an act made in the seventh year of the reign of her late majesty queen *Anne*, intituled, "An act for the continuing the former act, for the encouragement of coinage, and to encourage the bringing foreign coins, and *British* or foreign plate to be coined, and for making provision for the mints in *Scotland*, and for the prosecuting offences concerning

cerning the coin in *England*," there is a limited sum of four hundred pounds a year, directed to be allowed out of the coinage duty for the expences of prosecuting offenders against the laws relating to the coin; which sum for several years last past has proved greatly deficient, insomuch that there appears to have been expended for the carrying on of those prosecutions, the sum of seven hundred and two pounds, three shillings and seven pence, over and above the sum of four hundred pounds *per annum* allowed for that service; and as the law now stands, the said sum of seven hundred and two pounds, three shillings and seven pence, cannot be brought to account; Be it thereof further enacted, That the lord high treasurer, or the lords commissioners of the treasury for the time being, shall and may, out of the money arising by the coinage duty, order and allow such further sums of money as the expences of the said prosecutions have in such last years amounted to, over and above the said four hundred pounds a year; and also shall and may, at all times hereafter, order and allow out of the money arising by the said coinage duty such sums of money, for defraying the future expences of the said prosecutions, as he or they shall see fit, provided the said expences do not, in any one year, exceed the sum of six hundred pounds."

Arrears of charges of prosecution to be allowed.

Future expences settled.

## Commitment.

**COMMITMENT**, is the sending of a person to prison by warrant or order, either for a crime, or for contumacy in refusing to do a thing required. Where a man is committed for a crime, the commitment must be *until discharged according to law*; but for contumacy, *until he comply and perform the thing required*; for in that case he shall not lie till sessions, but shall be discharged upon the performing his duty. *Cartb. 153. Trin. 2 W. & M. in B. R.*

All persons who are apprehended for offences notailable, as also persons who neglect to offer bail for offences which areailable, must be committed; and where ever a justice of peace is impowered to bind a person over, or to cause him to do a certain thing, he may commit him *quousque*, &c. if in his presence he shall refuse to be so bound, or to do such thing. *2 Hawk. P. C. 216.*

It is laid down by serjeant *Hawkins*, as a matter which seems agreed by who may all the old books, that wheresoever a constable or private person may commit, and justify the arresting another for felony or treason, he may also justify the sending or bringing him to the common gaol; and that every private person has as much authority in cases of this kind, as the sheriff, or any other



other officer, and may justify such imprisonment by his own authority, but not by the command of another. 2 *Hawk. P. C.* 116, 117.

But in as much as it is certain, that a person lawfully making such an arrest, may justify bringing the party to the constable, in order to be carried by him before a justice of peace; and in as much as the statutes of the 1 & 2 *P. & M. c.* 13. and 2 & 3 *P. & M. c.* 10. which direct in what manner persons brought before a justice of the peace for felony, shall be examined by him, in order to their being committed or bailed, seem clearly to suppose, that all such persons are to be brought before such justice for such purpose; and inasmuch as the statute of 31 *Car. 2.* commonly called the *habeas corpus* act, seems to suppose that all persons, who are committed to prison, are there detained by virtue of some warrant in writing, which seems to be intended of a commitment by some magistrate; and the constant tenor of the late books, practice and opinions, are agreeable hereto; it is certainly most adviseable at this day, for any private person who arrests another for felony, to cause him to be brought, as soon as conveniently he may, before some justice of peace, that he may be committed or bailed by him. 2 *Hawk. P. C.* 117. *H. P. C.* 91, 112. *Dalt. c.* 118.

It is certain, that the privy council, or any one or two of them, or secretary of state, may lawfully commit persons for treason, and for other offences against the state, as in all ages they have done. 2 *Hawk. P. C.* 117.

**Stat. 5 Hen. 4. c. 10.** [*A. D.* 1403. *Intituled*] “Justices of the peace shall imprison none but in the common gaol.”

Co. 119.

Cro. El. 129.

“*Item*, Because that divers constables of castles within the realm of England be assigned to be justices of peace by commission of our lord the king, and by colour of the said commissions they take people, to whom they bear evil will, and imprison them within the said castles, till they have made fine and ransom with the said constables for their deliverance; (2) it is ordained and established, that none be imprisoned by any justice of the peace, but only in the common gaol; saving to lords and other (which have gaols) their franchise in this case.”

Since this statute it has been held, that regularly no one can justify the detaining a prisoner in custody out of the common gaol, unless there be some particular reason for so doing; as if the party be so dangerously sick, that it would apparently hazard his life to send him to the gaol; or there be evident danger of a *rescous* from the rebels, &c. yet constant practice seems to authorize a commitment to a messenger; and it is said, that it shall be intended to have been made in order for the carrying off the party to gaol. 2 *Hawk. P. C.* 118.

And it is said, that if a constable bring a felon to gaol, and the gaoler refuse to receive him, the town where he is constable ought to receive him till the next gaol-delivery. *H. P. C.* 114.

If

If a person arrested in one county for a crime done in it, fly into another county and be retaken there, he may be committed by a justice of the first county to the gaol of such county. *H. P. C.* 93.

But by the better opinion, if he had before any arrest fled into such county, he must be committed to the gaol thereof by a justice of such county. 2 *Hawk. P. C.* 118. *Dalt. c.* 118.

Also it seems to be laid down as a rule by some books, that any offender may be committed to the gaol next to the place where he was taken, whether it lie in the same county or not. 2 *Hawk. P. C.* 118.

As prisoners ought to be committed at first to the proper prison, so ought they not to be removed thence, except in some special cases; for which see the *stat.* 31 *Car.* 2. *c.* 2. under **Bail**.

**Stat.** 6 *Geo.* 1. *c.* 19. [*A. D.* 1719.] “And whereas vagrants and other criminals, offenders and persons charged with small offences, are for such offences, or for want of sureties, to be committed to the county gaol, it being adjudged that by law, the justices of the peace cannot commit them to any other prison for safe custody, which by experience hath been found to be very prejudicial and expensive: Be it enacted by the authority aforesaid, That it shall and may be lawful, to and for the justices of the peace, within their respective jurisdictions, to commit such vagrants, and other criminals, offenders, person and persons, either to the common gaol or house of correction, as they in their judgment shall think proper; any law, custom or usage to the contrary notwithstanding.”

Justices of peace may commit vagrants, &c. to the common gaol or house of correction.

By *stat.* 24 *Geo.* 2. *c.* 55. If any person is apprehended upon a warrant indorsed in another county, for an offence not bailable, or if he shall not there find bail, he shall be carried back into the first county, and be committed, or, if bailable, bailed by the justices in such first county, to appear at the next assizes or general gaol delivery, or next general or quarter-sessions to be held for the county where the offence was committed.

Every commitment must be in writing, and under the hand and seal, and shew the authority of him that made it, and the time and place, and must be directed to the keeper of the prison. *Hawk. P. C.* 119. It may be either in the king's name, and only tested by the justice, or in the justice's name. 2 *Hawk. P. C.* 119.

Form of the commitment.

It may command the gaolers to keep the party in close custody; for this being what he is obliged to do by law, it can be no fault to command him to be so. 2 *Hawk. P. C.* 119.

It ought to set forth the crime with convenient certainty, whether the commitment be by the privy council, or any other authority, otherwise the officer is not punishable, by reason of such *mittimus*, for suffering the party to escape; and the court, before whom he is removed by *habeas corpus*, ought to discharge or bail him; and this doth not only hold where no cause at all is expressed in the commitment, but also where it

## Commitment.

it is so loosely set forth that the court cannot adjudge whether it were a reasonable ground for imprisonment. 2 *Hawk. P. C.* 119.

A commitment for high treason or felony in general, without expressing the particular species, has been held good. 2 *Hawk. P. C.* 119. But now, since the *habeas corpus act*, it seems that such a general commitment is not good; and therefore where *A.* and *B.* were committed for aiding and abetting Sir *James Montgomery* to make his escape, who was committed by a warrant of a secretary of state for high treason, on a *habeas corpus*, they were admitted to bail, because it did not appear what species of treason Sir *James* was guilty of. *Skin.* 596. 1 *Salk.* 347. *S. C.*

It is safe to set forth that the party is charged upon oath; but this is not necessary; for it hath been resolved, that a commitment for treason, or for suspicion of it, without setting forth any particular accusation or ground of the suspicion, is good. 2 *Hawk. P. C.* 120.

Every such *mittimus* ought to have a lawful conclusion; viz. that the party be safely kept till he be delivered by law, or by order of law, or by due course of law, or that he be kept till further order (which shall be intended of the order of law) or to the like effect; and if the party be committed only for want of bail, it seems to be a good conclusion of the commitment, that he be kept till he find bail; but a commitment till the person who makes it shall take further order, seems not to be good; and it seems that the party committed by such or any other irregular *mittimus* may be bailed. 2 *Hawk. P. C.* 120.

Also a commitment grounded on an act of parliament ought to be conformable to the method prescribed by such statute; as where the churchwardens of *Northampton* were committed on the 43 *Eliz. c. 2.* and the warrant concluded in the common form, viz. *until they be duly discharged according to law*; but the statute appointing, *that the party should there remain until he should account*, for want of such conclusion they were discharged. *Carth.* 152, 153.

So where one *Bracey* was committed by the commissioners of bankrupts, for refusing to answer, and they concluded their warrant, viz. *until he conform himself to our authority, and be thence delivered by due course of law*; and upon the return of a *habeas corpus*, he was discharged; for the statute only impowers them to commit *until he submit himself to be by them examined*. 1 *Salk.* 348.

So where the warrant returned of a commitment by commissioners of bankrupt, for refusing to be examined by them, was, viz. *or otherwise discharged by due course of law*, it was held naught; for the statute is, he shall be committed until he submit himself to be examined by the commissioners. 1 *Salk.* 351.

Defendant was committed, upon a conviction for deer-stealing, for a year, and till such time as he should be set in the pillory, whereas the act lays for a year only, and therefore he was discharged. *Comb.* 305.

By *stat. 3 Hen. 7. c. 3.* The sheriff or gaoler shall certify the commitment to the next gaol-delivery. See this act at large under title *Bail*, p. 207.

Duty of the  
gaoler.

Stat.

**Stat. 3 Jac. 1. c. 10.** [*A. D. 1605. Intituled*] “An act for the rating and levying of the charges for conveying malefactors and offenders to gaol.”

“Whereas his majesty’s honest and loving subjects are much charged and burthened in conveying felons, and other malefactors and offenders against his majesty’s laws and statutes, unto the gaol, punishable by imprisonment there, the said felons and other malefactors and offenders having goods and chattels of their own, whereby to defray the same charge themselves, to the great encouragement of such malefactors and offenders in their said wicked and bad courses, and to the discouragement of his majesty’s said honest and loving subjects in prosecuting the said malefactors and offenders to be punished according to their demerits; (2) Be it enacted by the king’s most excellent majesty, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, That all and every person and persons whatsoever, that from and after the end of this present session of parliament shall be committed to the common or usual gaol within any county or liberty within this realm, by any justice or justices of the peace, for any offence or misdemeanor, to any such gaol, That the said person or persons so to be committed, as aforesaid, having means or ability thereunto, shall bear their own reasonable charges for so conveying or sending them to the said gaol, and the charges also of such as shall be appointed to guard them to such gaol, and shall so guard them thither: (3) And if any such person or persons, so to be committed as aforesaid, shall refuse at the time of their commitment and sending to the said gaol, to defray the said charges, or shall not then pay or bear the same, That then such justice or justices of the peace shall and may by writing under his or their hand and seal, or hands and seals, give warrant to the constable or constables of the hundred, or constable or tithing-man of the tithing or township where such person or persons shall be dwelling and inhabit, or from whence he or they shall be committed, as aforesaid, or where he or they shall have any goods within the county or liberty, to sell such and so much of the goods and chattels of the said persons so to be committed, as by the discretion of the said justice or justices of the peace shall satisfy and pay the charges of such his or their conveying and sending to the said gaol, the appraisement to be made by four of the honest inhabitants of the parish or tithing where such goods or chattels shall remain and be, and the overplus of the money which shall be made thereof, to be delivered to the party to whom the said goods shall belong.

At whose charge an offender shall be conveyed to gaol.

How the charges shall be levied, if the prisoner refuse to pay them.

**Sett. 2.** “And be it further enacted by the authority aforesaid, That if the said person or persons so to be committed, as aforesaid, shall not have or be known to have any goods or chattels which may be sold for the purpose aforesaid, within the county or liberty, That then an indifferent tax or assessment shall be made by the constables and church-wardens, and two or three other the honest inhabitants of the parish, township or tithing

If the offender be not able to bear his charges, the parishioners shall do it.

The remedy  
if any person  
taxed refuse to  
pay.

tithing where the said offender or offenders shall be taken or apprehended ; the said taxation being allowed under the hand of one or more justice or justices of the peace, if there be such constables or churchwardens there inhabiting ; and in default of them, by four of the principal inhabitants of the said parish, township or tithing where such offenders shall be taken or apprehended : (2) And if any so taxed or assessed, shall refuse to pay their said taxation, then the justice or justices of peace by whom the said offenders shall be committed to prison, as aforesaid, or any other justice of peace near adjoining, shall and may give warrant, as aforesaid, to the constable, tithing-man or other officer, there to distrain the goods of any so assessed, which shall refuse to pay the same, and to sell the same ; (3) and that such person or persons so authorized, shall have full power and authority so to distrain, and by appraisement of four substantial inhabitants of the said place, to sell a sufficient quantity of the goods and chattels of the said person so refusing, for the levying of the said taxation ; and if any overplus of money come by the sale thereof, the same to be delivered to the person or persons, owner or owners thereof.

The defend-  
ant's plea in  
an action  
brought for  
any thing  
done by force  
of this act.

*Señ. 3.* " And be it enacted by the authority of this present parliament, That if any action of trespass or other suit shall happen to be attempted or brought against the person or persons for taking of any distress, making of any sale, or any other act by authority of this present act, the defendant or defendants in any such action or suit, shall and may either plead Not guilty, or otherwise make avowry, Cognizance or justification for the taking of the said distresses, making of sale or other act by virtue of this act ; (2) alledging in such avowry, cognizance or justification, that the said distress, sale, trespass or other thing whereof the plaintiff or plaintiffs complained, was done by authority of this act, and according to the tenor, purport and effect of this act, without any expressing or rehearsal of any other matter or circumstance contained in this present act : (3) To which avowry, cognizance or justification the plaintiff shall be admitted to reply, That the defendant did take the said distress, made the said sale, or did any other act or trespass supposed in his declaration, of his own wrong, without any such cause alledged by the said defendant ; whereupon the issue in every such action shall be joined to be tried by verdict of twelve men, and not otherwise, accustomed in other personal actions ; (4) and upon the trial of that issue, the whole matter to be given on both parties in evidence, according to the very truth of the same ; (5) And after such issue tried for the defendant, or nonsuit of the plaintiff after appearance, the said defendant to recover treble damages by reason of his wrongful vexation in that behalf, with costs also on that part sustained, and that to be assessed by the same jury or writ, to enquire of the damages as the same shall require : (6) This act to continue until the end of the first session of the next parliament. *3 Car. 1. c. 4.* Continued until the end of the first session of the next parliament, *and farther continued by 16 Car. 1. c. 4."*

The defend-  
ant shall re-  
cover treble  
damages and  
costs of suits.

The continu-  
ance of this  
act.

**Stat. 27 Geo. 2. c. 3.** [*A. D. 1754.*] *made, among other purposes,* “for the better securing constables and others the expences of conveying offenders to gaol.”

“Whereas by an act passed in the third year of the reign of king *James 3 Jac. : c. 10.* the First, intituled, *An act for the rating and levying of the charges for conveying malefactors and offenders to the gaol;* every offender so to be conveyed shall bear the charges of himself, and of those who convey him; and if he refuse so to do, his goods within the same county may be distrained and sold to satisfy the same; and if he hath no goods, the constable, churchwardens and other inhabitants of the parish where he was taken, shall make a tax on every inhabitant thereof to pay the said charges: And whereas the taxing the parish where such offender was taken to pay such charges, is a great discouragement to parishes to take offenders; and it is also found by experience to be very difficult to make a rate on the inhabitants to raise such tax; whereby constables and others are often kept out of their money by them advanced for the service of the publick, and sometimes lose the same, to their very great injury and vexation: For remedy whereof; Be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That, from and after the twenty-fourth of *June* one thousand seven hundred and fifty-four, when any person, not having goods or money within the county where he is taken, sufficient to bear the charges of himself, and of those who convey him, is committed to gaol or the house of correction by warrant from any justice or justices of the peace, then, on application by any constable or other officer who conveyed him to any justice of the peace for the same county or place, shall upon oath examine into and ascertain the reasonable expences to be allowed such constable or other officer, and shall forthwith, without fee or reward, by warrant under his hand and seal, order the treasurer of the county or place to pay the same, which the said treasurer is hereby required to do, as soon as he receives such warrant; and any sum so paid shall be allowed in his accounts.

Offenders not having sufficient to defray the expences of conveying them to gaol, &c.

Justices to grant a warrant on the treasurer of the county for payment of the charges.

**Sect. 2.** “And be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June* so much of the above-mentioned act passed in the third year of king *James* the First, as relates to taxing the parish where offenders are taken, for defraying the charges of conveying offenders to gaol, shall be repealed.”

Part of the act of 3 Jac. 1. c. 10. relating to taxing parishes for conveying offenders to gaol, repealed.

A person legally committed for a crime, certainly appearing to have been done by some one or other, cannot be lawfully discharged by any other but by the king, till he be acquitted on his trial, or have an *ignoramus* found by the grand jury, or none to prosecute him on a proclamation for that purpose, by the justices of gaol delivery. 2 *Hawk. P. C.*

How party committed may be discharged.

121.

But if a person be committed on a bare suspicion, without any appeal or indictment for a supposed crime, where afterwards it appears that there

was none; as for the murder of a person thought to be dead, who afterwards is found to be alive; it hath been holden that he may be safely dismissed, without any farther proceeding; for that he who suffers him to escape, is properly punishable only as an accessory, where there can be no principal; and it would be hard to punish one for a contempt founded for a suspicion appearing in so uncommon a manner to be groundless. 2 *Hawk. P. C.* 121.

## Common Prayer.

**STATUTE** 1 *Eliz. c. 2.* [*A. D.* 1558. *Intituled*] *An act for the uniformity of Common prayer, and service in the church, and administration of the sacraments.*

13 & 14  
Car. 2. c. 4.

Stat. 5 & 6 Ed.  
6. c. 1.  
A repeal of the  
statute of 1 M.  
Sess. 2. c. 2.  
and the book  
of Common  
Prayer shall be  
of effect.

1 Leon. 295.

The book of  
Common

“ Where at the death of our late sovereign lord king *Edward* the Sixth, there remained one uniform order of common service and prayer, and of the administration of sacraments, rites and ceremonies of the church of *England*, which was set forth in one book, intituled, *The Book of Common Prayer, and administration of sacraments, and other rites and ceremonies in the church of England*, authorized by act of parliament, holden in the fifth and sixth years of our said late sovereign lord king *Edward* the Sixth, intituled, *An act for the uniformity of common prayer and administration of the sacraments*; the which was repealed and taken away by act of parliament in the first year of the reign of our late sovereign lady queen *Mary*, to the great decay of the due honour of God, and discomfort to the professors of the truth of Christ's religion :

*Sect. II.* “ Be it therefore enacted by the authority of this present parliament, That the said estatute of repeal, and every thing therein contained, only concerning the said book, and the service, administration of the sacraments, rites and ceremonies contained or appointed in or by the said book, shall be void and of none effect, from and after the feast of the nativity of *St. John Baptist* next coming; (2) And that the said book, with the order of service, and of the administration of sacraments, rites and ceremonies, with the alterations and additions therein added and appointed by this estatute, shall stand and be from and after the said feast of the nativity of *St. John Baptist*, in full force and effect, according to the tenor and effect of this estatute; any thing in the aforesaid estatute of repeal to the contrary notwithstanding.

*Sect. 3.* “ And further be it enacted by the queen's highness, with the assent of the Lords and commons in this present parliament assembled, and

and by the authority of the same, That all and singular ministers in any cathedral or parish church, or other place within this realm of *England*, *Wales*, and the marches of the same, or other the queen's dominions, shall from and after the feast of the nativity of *St. John Baptist* next coming, be bounden to say and use the mattens, even-song, celebration of the Lord's supper, and administration of each of the sacraments, and all the common and open prayer, in such order and form as is mentioned in the said book so authorized by parliament, in the said fifth and sixth years of the reign of king *Edward* the Sixth, with one alteration or addition of certain lessons to be used on every *Sunday* in the year, and the form of the Litany altered and corrected, and two sentences only added in the delivery of the sacrament to the communicants, and none other or otherwise.

*Sect. 4.* "And that if any manner of parson, vicar, or other whatsoever minister, that ought or should sing or say common prayer mentioned in the said book, or minister the sacraments, from and after the feast of the nativity of *St. John Baptist* next coming, refuse to use the said common prayers, or to minister the sacraments in such cathedral or parish church, or other places as he should use to minister the same, in such order and form as they be mentioned and set forth in the said book; (2) or shall wilfully or obstinately, standing in the same, use any other rite, ceremony, order, form or manner of celebrating the Lord's supper, openly or privily, or mattens, even-song, administration of the sacraments, or other open prayers than is mentioned and set forth in the said book, (3) (*open prayer in and throughout this act, is meant that prayer which is for others to come unto or hear, either in common churches or private chapels or oratories, commonly called the service of the church,*) (4) or shall preach, declare or speak any thing in the derogation or depraving of the said book, or any thing therein contained, or of any part thereof, (5) and shall be thereof lawfully convicted, according to the laws of this realm, by verdict of twelve men, or by his own confession, or by the notorious evidence of the fact, shall lose and forfeit to the queen's highness, her heirs and successors, for his first offence, the profit of all his spiritual benefices or promotions coming or arising in one whole year next after his conviction: (6) And also that the person so convicted, shall for the same offence suffer imprisonment for the space of six months, without bail or mainprize.

*Sect. 5.* "And if any such person once convicted of any offence, concerning the premisses, shall after his first conviction estoons offend, and be thereof in form aforesaid lawfully convicted, that then the same person shall for his second offence suffer imprisonment by the space of one whole year, (2) and also shall therefore be deprived, *ipso facto*, of all his spiritual promotions; (3) and that it shall be lawful to all patrons or donors of all and singular the same spiritual promotions, or of any of them, to present or collate to the same, as though the person or persons so offending were dead.



The penalty  
for the third  
offence.

*Seet. 6.* " And that if any such person or persons, after he shall be twice convicted in form aforesaid, shall offend against any of the premisses the third time, and shall be thereof in form aforesaid lawfully convicted, that then the person so offending and convicted the third time, shall be deprived *ipso facto*, of all his spiritual promotions, and also shall suffer imprisonment during his life.

The penalty  
of an offender  
having no spi-  
ritual promo-  
tion.

*Seet. 7.* " And if the person that shall offend, and be convicted in form aforesaid, concerning any of the premisses, shall not be beneficed, nor have any spiritual promotion, that then the same person so offending and convicted, shall for the first offence suffer imprisonment during one whole year next after his said conviction, without bail or mainprize.

*Seet. 8.* " And if any such person, not having any spiritual promotion, after his first conviction shall afterwards offend in any thing concerning the premisses, and shall in form aforesaid be thereof lawfully convicted, that then the same person shall for his second offence suffer imprisonment during his life.

The forfeiture  
of them which  
do any thing,  
or speak in  
the derogation  
of the book  
of Common  
Prayer.  
Causing other  
prayer to be  
said or sung.  
Coke pl. fol.  
362.  
1 Rol. 95.  
1 Mod. 168.

*Seet. 9.* " And it is ordained and enacted by the authority aforesaid, That if any person or persons whatsoever, after the said feast of the nativity of St. *John Baptist* next coming, shall in any enterludes, plays, songs, rhymes, or by other open words, declare or speak any thing in the derogation, depraving or despising of the same book, or of any thing therein contained, or any part thereof: (2) or shall by open fact, deed, or by open threatnings, compel or cause, or otherwise procure or maintain any parson, vicar or other minister in any cathedral or parish church, or in chapel or in any other place, to sing or say any common or open prayer, or to minister any sacrament otherwise, or in any other manner and form than is mentioned in the said book; (3) or that by any of the said means shall unlawfully interrupt or let any parson, vicar or other minister in any cathedral or parish church, chapel, or any other place, to sing or say common and open prayer, or to minister the sacraments, or any of them, in such manner and form, as is mentioned in the said book; (4) that then every such person, being thereof lawfully convicted in form aforesaid, shall forfeit to the queen our sovereign lady, her heirs and successors, for the first offence an hundred marks.

The forfeiture  
of an hundred  
marks for the  
first offence.

The forfeiture  
of four hun-  
dred marks for  
the second of-  
fence.

*Seet. 10.* " And if any person or persons being once convicted of any such offence, afterwards offend against any of the last recited offences, and shall in form aforesaid be thereof lawfully convicted; that the same person so offending and convicted, shall for the second offence forfeit to the queen our sovereign lady, her heirs and successors, four hundred marks.

The forfeiture  
for the third  
offence.

*Seet. 11.* " And if any person, after he in form aforesaid shall have been twice convicted of any offence concerning any of the last-recited offences, shall offend the third time, and be thereof in form aforesaid lawfully convicted, That then every person so offending and convicted, shall for his third offence forfeit to our sovereign lady the queen, all his goods and chattels, and shall suffer imprisonment during his life.

The penalty,  
if the party

*Sect. 12.* " And if any person or persons, that for his first offence concerning the premisses shall be convicted in form aforesaid, do not pay the sum

sum to be paid by virtue of his conviction, in such manner and form as the same ought to be paid, within six weeks next after his conviction; that then every person so convicted, and so not paying the same, shall for the same first offence, instead of the said sum, suffer imprisonment by the space of six months, without bail or mainprize.

convicted do not pay his forfeiture within the time limited.

*Sect. 13.* " And if any person or persons, that for his second offence concerning the premises shall be convicted in form aforesaid, do not pay the said sum to be paid by virtue of his conviction and this estatute, in such manner and form as the same ought to be paid, within six weeks next after his said second conviction, That then every person so convicted, and not paying the same, shall for the same second offence, instead of the said sum, suffer imprisonment during twelve months, without bail or mainprize.

*Sect. 14.* " And that from and after the said feast of the nativity of St. *John Baptist* next coming, all and every person and persons inhabiting within this realm, or any other the queen's majesty's dominions, shall diligently and faithfully, having no lawful or reasonable excuse to be absent, endeavour themselves to resort to their parish church or chapel accustomed, or upon reasonable let thereof, to some usual place where common prayer and such service of God shall be used in such time of let, upon every *Sunday* and other days ordained and used to be kept as holy days, and then and there to abide orderly and soberly, during the time of the common prayer, preaching, or other service of God there to be used and ministred; (2) upon pain of punishment by the censures of the church, and also upon pain that every person so offending shall forfeit for every such offence, twelve pence, to be levied by the church-wardens of the parish where such offence shall be done, to the use of the poor of the same parish, of the goods, lands and tenements of such offender, by way of distress.

Every person shall resort to the church upon the holy days. Godbolt 148. pl. 191. One justice may convict the offender, &c. by 3 Jac. 1. c. 4. sect. 27. 2 Rol. 438, 455. March 93. The forfeiture for not coming to church. 23 Eliz. c. 1. 11 Co. 56. 1 Rol. 89.

*Sect. 15.* " And for due execution hereof, the queen's most excellent majesty, the lords temporal and all the commons, in this present parliament assembled, do in God's name earnestly require and charge all the archbishops, bishops and other ordinaries, that they shall endeavour themselves to the uttermost of their knowledges, that the due and true execution hereof may be had throughout their diocese and charges, as they will answer before God, for such evils and plagues wherewith Almighty God may justly punish people for neglecting this good and wholesome law.

*Sect. 16.* " And for their authority in this behalf, be it further enacted by the authority aforesaid, That all and singular the said archbishops, bishops and all other their officers exercising ecclesiastical jurisdiction, as well in place exempt as not exempt, within their dioceses, shall have full power and authority by this act, to reform, correct and punish by censures of the church, all and singular persons which shall offend within any their jurisdictions or dioceses, after the said feast of the nativity of St. *John Baptist* next coming, against this act and statute; any other law, statute

The ordinary may punish offenders by the censures of the church.

tute, privilege, liberty or provision heretofore made, had or suffered to the contrary notwithstanding.

Which justices may punish these offences.

*Sect. 17.* " And it is ordained and enacted by the authority aforesaid, That all and every justices of *Oyer* and *Determiner*, or justices of assize, shall have full power and authority in every of their open and general sessions, to enquire, hear and determine all and all manner of offences that shall be committed or done contrary to any article contained in this present act, within the limits of the commission to them directed, and to make process for the execution of the same, as they may do against any person being indicted before them of trespass, or lawfully convicted thereof.

A bishop may join with the justices to enquire of offenders.

*Sect. 18.* " Provided always, and be it enacted by the authority aforesaid, That all and every archbishop and bishop, shall or may at all time and times, at his liberty and pleasure, join and associate himself, by virtue of this act, to the said justices of *Oyer* and *Determiner*, or to the said justices of assize, at every of the said open and general sessions to be holden in any place within his diocese, for and to the enquiry, hearing and determining of the offences aforesaid.

At whose charges the books of Common Prayer shall be gotten.

*Sect. 19.* " Provided also, and be it enacted by the authority aforesaid, That the books concerning the said services shall, at the costs and charge of the parishioners of every parish and cathedral church, be attained and gotten before the said feast of the nativity of *St. John Baptist* next following; (2) and that all such parishes and cathedral churches, or other places, where the said books shall be attained and gotten before the said feast of the nativity of *St. John Baptist*, shall, within three weeks next after the said books so attained and gotten, use the said service, and put the same in use according to this act.

Within what time offenders shall be impeached. Godbolt 148. pl. 191.

*Sect. 20.* " And be it further enacted by the authority aforesaid, That no person or persons shall be any time hereafter impeached or otherwise molested of or for any of the offences above-mentioned, hereafter to be committed or done contrary to this act, unless he or they so offending be thereof indicted at the next general sessions to be holden before any such justices of *Oyer* and *Determiner*, or Justices of assize, next after any offence committed or done contrary to the tenor of this act.

Trial of peers.

*Sect. 21.* " Provided always, and be it ordained and enacted by the authority aforesaid, That all and singular lords of the parliament, for the third offence above-mentioned, shall be tried by their peers.

Chief officers of cities and boroughs shall enquire of offenders.

*Sect. 22.* " Provided also, and be it ordained and enacted by the authority aforesaid, That the mayor of *London*, and all other mayors, bailiffs and other head officers of all and singular cities, boroughs and towns corporate within this realm, *Wales*, and the marches of the same, to the which justices of assize do not commonly repair, shall have full power and authority by virtue of this act, to enquire, hear and determine the offences aforesaid, and every of them, yearly within fifteen days after the feast of *Easter*, and *St. Michael* the archangel, in like manner and form as justices of assize, and *Oyer* and *Determiner* may do.

The ordinary's jurisdiction in these cases.

*Sect. 23.* " Provided always, and be it ordained and enacted by the authority aforesaid, That all and singular archbishops and bishops, and every

every of their chancellors, commissaries, archdeacons, and other ordinaries, having any peculiar ecclesiastical jurisdiction, shall have full power and authority by virtue of this act, as well to enquire in their visitation, synods, and elsewhere within their jurisdiction, at any other time and place, to take accusations and informations of all and every the things above-mentioned, done, committed, or perpetrated within the limits of their jurisdictions and authority, and to punish the same by admonition, excommunication, sequestration or deprivation, and other censures and process in like form, as heretofore hath been used in like cases by the queen's ecclesiastical laws."

*Seet.* 24. "Provided always, and be it enacted, That whatsoever persons offending in the premises, shall for their offences first receive punishment of the ordinary, having a testimonial thereof under the said ordinary's seal, shall not for the same offence afterwards be convicted before the justices: (2) and likewise receiving for the said offence, punishment first by the justices, shall not for the same offence afterwards receive punishment of the ordinary; any thing contained in this act to the contrary notwithstanding."

None shall be punished above once for one offence.

*Seet.* 25. "Provided always, and be it enacted, That such ornaments of the church and of the ministers thereof, shall be retained and be used, as was in this church of *England*, by authority of parliament, in the second year of the reign of king *Edward* the sixth, until other order shall be therein taken by the authority of the queen's majesty, with the advice of her commissioners appointed and authorized under the great seal of *England* for causes ecclesiastical, or of the metropolitan of this realm."

Ornaments of the church and ministers.

*Seet.* 26. "And also that if there shall happen any contempt or irreverence to be used in the ceremonies or rites of the church, by the mis-using of the orders appointed in this book, the queen's majesty may, by the like advice of the said commissioners or metropolitan, ordain and publish such further ceremonies or rites as may be most for the advancement of God's glory, the edifying of his church, and due reverence of *Christ's* holy mysteries and sacraments."

*Seet.* 27. "And be it further enacted by the authority aforesaid, That all laws and all laws, statutes and ordinances, wherein or whereby any other service, administration of sacraments or common prayer, is limited, established, or set forth to be used within this realm, or any other the queen's dominions, or countries shall from henceforth be utterly void and of none effect. *Made perpetual by 5 Annæ, c. 5. as to the establishment of the church.*"

All laws and ordinances made for other service, shall be void.

**Stat.** 13 & 14 *Car.* 2. c. 4. [*A. D.* 1662.] made among other purposes, "for the uniformity of publick prayers, and administration of sacraments, and other rites and ceremonies."

*Seet.* 7. "And be it further enacted by the authority aforesaid, That in all places where the proper incumbent of any parsonage, or vicarage, or benefice with cure, doth reside on his living, and keep a curate, Incumbents of livings, keeping curates, shall read the common

prayer once every month. the incumbent himself in person (not having some lawful impediment to be allowed by the ordinary of the place) shall once (at the least) in every month, openly and publickly, read the common prayers and service in and by the said book prescribed, and (if there be occasion) administer each of the sacraments, and other rites of the church, in the parish church or chapel, of, or belonging to the same parsonage, vicarage or benefice, in such order, manner and form, as in and by the said book is appointed;

The penalty and manner of conviction for not doing it. (2) upon pain to forfeit the sum of five pounds to the use of the poor of the parish for every offence, upon conviction by confession, or proof of two credible witnesses upon oath, before two justices of the peace of the county, city or town corporate where the offence shall be committed, (which oath the said justices are hereby impowered to administer); and in default of payment within ten days, to be levied by distress and sale of the goods and chattels of the offender, by the warrant of the said justices, by the churchwardens, or overseers of the poor of the said parish, rendering the surplusage to the party."

## Confession.

CONFESSIO<sup>N</sup>, is when a prisoner is appealed or indicted of treason or felony, and brought to the bar to be arraigned, and his indictment is read unto him; and the court demands what he can say thereto; then either he *confesses* the offence, and the indictment to be true, or pleads *Not guilty*, or else gives an indirect answer, and so in effect stands mute. *Confession* may be made in two sorts, and to two several ends. The one is, he may *confess* the offence whereof he is indicted openly in the court, before the judge, and submit himself to the censure and judgment of the law, which *confession* is the most certain answer and best satisfaction that may be given to the judge to condemn the offender; so that it proceeds freely of his own accord, without any threats, force or extremity used. For if the *confession* arise from any of these causes, it ought not to be recorded. As if a woman was indicted for the felonious taking of bread to the value of two shillings, and being thereof arraigned, she *confess* the felony, and said, That she did it by the commandment of her husband; and the judges, in pity, would not record her *confession*, but caused her to plead *Not guilty* to the felony; whereupon the jury found that she stole the bread by compulsion of the husband against her will, for which cause she was discharged. 27 *Assis. pl.* 50. The other kind of *confession* is, when a prisoner *confesses* the indictment to be true, and that he committed the offence whereof he is indicted,

indicted, and then becomes an approver, that is, an accuser of others, who have committed the same *offence* whereof he is indicted, or offences with him; and then prays the judge to have a coroner assigned him, to whom he may make relation of those offences, and the full circumstances thereof. There is also a third kind of *confession* made by an *offender* in felony, which is not in court before the judge, as the other two are; but before a coroner in a church, or other privileged place, upon which the *offender*, by the ancient law of the realm was to abjure. *Cowell, edit.* 1727.

*Confession*, according to some writers is twofold, either *express* or *implied*.

An *express* confession is, where a person directly confesses the crime with which he is charged, which is the highest conviction that can be. 2 *Haw.* 333.

But it is usual for the court, especially if it be out of clergy, to advise the party to plead and put himself upon his trial, and not presently to record his confession, but to admit him to plead. 2 *H. H.* 225.

An *implied* confession is, where a defendant in a case not capital, doth not directly own himself guilty, but in a manner admits it by yielding to the king's mercy, and desiring to submit to a small fine; which submission the court may accept of if they think fit, without putting him to a direct confession. 2 *Haw.* 233.

It seems that the confession of the defendant, taken upon examination before justices of the peace, or in discourse with private persons, may be given in evidence against the party confessing, but not against others. 2 *Haw.* 429.

All those who on their examination own themselves guilty of a felony alledged against them, and are charged in their *mittimus* with the felony so confessed, seem to be excluded from bail; for bail is only proper where it stands indifferent whether the party be guilty or innocent. 2 *Haw.* 97.

# Conspiracy.

CONSPIRACY, notwithstanding that in *Latin* and *French* it is used for an agreement of men to do a good or evil thing, yet it is commonly taken in our law in the evil part; and is defined in *Stat.* 33 *Ed.* 1. *st.* 2. in which Statute it is confounded with *maintenance* and *champerty*; but in a more special signification it is taken for a confederacy between two or more, falsely to indict one, or to procure one to be indicted of felony. *Termes de la ley.*

## Conspiracy.

By the common law there can be no doubt, but that all confederacies whatsoever, wrongfully to prejudice a third person, are highly criminal; as where divers persons confederate together by indirect means to impoverish a third person, or falsely and maliciously to charge a man with being the reputed father of a bastard child, or to maintain one another in any matter whether it be true or false. 1 *Haw.* 190.

**Stat. 33 Ed. 1. st. 2.** [*A. D.* 1304. *Intituled*] *A definition of conspirators, made Anno 33 Edw. 1. stat. 2. and A. D. 1304.* "Who be conspirators, and who be champertors."

20 H. 7. f. 11. "Conspirators be they that do confeder or bind themselves by oath,  
Fitz Barre, 4. covenant, or other alliance, that every of them shall aid and bear the other  
Kel. 81. falsely and maliciously to indite, or cause to indite, (2) or falsly to move  
Fitz. Consp. 2. or maintain pleas; (3) and also such as cause children within age to appeal  
4, 5, 10, 13, men of felony, whereby they are imprisoned and fore grieved; (4) and  
14, 15, 16, such as retain men in the country with liveries or fees for to maintain  
19, 21, 22, their malicious enterprises; and this extendeth as well to the takers as to  
25. the givers. (5) And stewards and bailiffs of great lords, which by their  
8 Co. 37. feignory, office, or power, undertake to bear or maintain quarrels, pleas,  
V. N. B. 56. or debates that concern other parties than such as touch the estate of their  
F. N. B. 117. lords or themselves. (6) This ordinance and final definition of conspirators  
H. was made and accorded by the king and his council in his parliament the  
Raft. 122. thirty-third year of his reign. (7) And it was further ordained, that justices  
2 Inst. 562. assigned to the hearing and determining of felonies and trespasses, should  
3 Inst. 143. have the transcript hereof. (8) Champertors be they that move pleas and  
suits, or cause to be moved either by their own procurement, or by others,  
and sue them at their proper costs for to have part of the land in variance,  
or part of the gains.

Whobecham-  
pertors.

From this definition of conspirators it seems clearly to follow, contrary to the opinion of lord *Coke*, that not only those who actually cause an innocent man to be indicted, and also to be tried upon the indictment, whereupon he is lawfully acquitted, are properly conspirators, but that those also are guilty of this offence, who barely conspire to indict a man falsely and maliciously, whether they do any act in prosecution of such conspiracy or not. 1 *Haw.* 189. Lord *Raym.* 1169.

But an *action* will not lie for the conspiracy, unless it be put in execution, for in such case the *damage* is the ground of the action. Lord *Raym.* 378.

Also it plainly appears from the words of the statute, that one person alone cannot be guilty of a conspiracy, within the purport of it; from whence it follows, that if all the defendants who are prosecuted for such a conspiracy be acquitted but one, the acquittal of the rest, is the acquittal of that one also: And upon the same ground it hath been holden, that no such prosecution is maintainable against a husband and wife only, because they are esteemed but as one person in law: But it is certain that an action on the case, in the nature of a conspiracy, may be brought against one

only: Also, it hath been resolved, that if such an action be brought against several persons, and all but one be acquitted, yet judgment may be given against that one only. 1 *Haw.* 192.

The husband and wife and servants were indicted for a conspiracy to ruin the trade of the prosecutor, who was the king's card-maker. The evidence against them was, that they had at several times given money to the prosecutor's apprentices to put grease into the paste, which had spoiled the cards. But there was no account given, that ever more than one at a time were present, though it was proved they had all given money in their turns. It was objected, that this could not be a conspiracy, for two men might do the same thing without having any previous communication with one another. But the chief justice ruled, that the defendants being all of a family, and concerned in making cards; it would amount to evidence of a conspiracy, and directed the jury accordingly.

What is evidence of a conspiracy.  
1 *Sirran.* 144.  
Hil. 5 Geo. 1.  
Rex v. Cope et al.

She was indicted at *Hick's-hall*, for conspiring with *Edward Bygrave*, unjustly to charge *William Frankland* with a robbery, and for that purpose going before a justice of peace, where *Bygrave* swore it upon him; *Nicbolls* only came in and pleaded Not guilty. And the jury found that she was guilty, but that *Bygrave* died before the indictment was preferred. But before any judgment was given at the sessions, she brought a *certiorari*, and the cause was set down to be argued. The first thing determined was, that this being in the nature of a special verdict, there was no occasion for the defendant appearing in court upon the argument, for she is not considered as convicted, till after the court have determined upon the verdict. And it was therefore not within the reason of the case of moving for a new trial, or in arrest of judgment, where there being a general verdict, it created such a presumption of guilt, that the party cannot move, without being present in court. It then came on upon the merits; when exception was taken, that one alone cannot be guilty of a conspiracy, and here is but one convicted; but the court over-ruled this on the authority of *Kinnerfley's* case where judgment was given against him before the other had pleaded; so that there was a possibility of contradictory verdicts, which cannot be here. And I cited 1 *Vent.* 234. 24 *Ed.* 3. 34. b. 24 *Ed.* 3. 73. a in point. But then a doubt arose, what the court could do, the *certiorari* being brought before judgment. And this court, not being apprized of the circumstances of the offence, could not tell what judgment to give: and in *Carth.* 6. it is said, they cannot give judgment. A rule therefore was made to shew cause why the *certiorari* should not be quashed, so as to remit it back to the sessions; which was afterwards made absolute.

One conspirator may be convicted after the other is dead.  
2 *Stran.* 1227.  
East. 18 Geo.  
2. Rex v. Elizabeth Nicbolls.

Information, setting forth, that the defendants *Kinnerfley* and *Moore* being evil disposed persons, in order to extort money from my lord *Sunderland* did conspire together to charge my lord with endeavouring to commit *Sodomy* with the said *Moore*; and that in execution of this conspiracy, they did in the presence and hearing of several persons falsely and maliciously accuse my lord that he *conatus fuit rem habere* with the defendant *Moore*, and to commit sodomy. The defendant *Kinnerfley* only appears,

Conspiracy may be laid without any overt act, and if one be convicted, judgment shall be given against him before the trial of the

and



other. 1 Stran.  
193. Trin.  
5 Geo. 1.  
Rex v. Kin-  
nersley and  
Moore.

and pleads to issue, and is found guilty, and now several exceptions were taken in arrest of judgment.

*Brantbwayte* serjeant: The nature of the offence must appear upon the record, for by that only the court must judge, and the offence must be particularly and certainly alledged. *Conatus fuit* is incertain, for it might only be an act of the mind which before it was put in execution was suppressed by reason. 1 *Roll. Rep.* 79. 2 *Bulst.* 276. In an action for words, *per quod maritagi-um amisit*, the plaintiff declared, that whereas he *intendebat et conatus fuit* to marry such a woman, the plaintiff spoke of him such words *per quod, &c.* and this was held to be incertain and the judgment was arrested.

2. It should appear upon the record, that the party accused is innocent; for it is no crime to charge a guilty person with such an offence. They should have averred, *ubi revera et in facto he non conatus fuit* to do the act with which he was charged. *Hut.* 11, 49. In actions for a malicious prosecution, the plaintiff must shew the former action to be determined, and how; so likewise he must shew an acquittal upon an indictment. 1 *Keb.* 881.

3. "To every conspiracy there must be two persons at least; whereas here is only one brought in and found guilty. If hereafter the other should be found Not guilty, that will consequently be an acquittal of *Kinnerfley*. If three be indicted for a riot and an assault, and one only found guilty, and the others acquitted; this discharges them all, because the riot is the foundation, and the assault only the consequence. *Salk.* 593. And one person alone cannot be guilty of committing a riot: So in this case one cannot be guilty of the conspiracy, though he may of the overt act; and yet the foundation (which is the conspiracy) being removed, the other part, which is only the consequence, falls of course.

*Comyns*: Bare words are not a sufficient overt act, without alledging something actually done towards putting the conspiracy in execution, 4 *Co.* 16. a. 1 *Roll. Abr.* 110. p. 6. 9 *Co.* 56. b. For if there be only words, an action of *scandalum magnatum* lies. If the charge on my lord was by course of law, then the defendants are justified, till it is falsified in a legal manner, either by *ignoramus* or acquittal. 1 *Roll. Abr.* 113, 114. R. 2. And the court will not suffer the party accused to bring his action, till he has manifested his innocence; because otherwise there might be contradictory judgments, for the parties might be condemned in an action for that prosecution, which they might afterwards establish; and then these two judgments would be inconsistent. 3 *Keb.* 799.

The offence with which my lord is charged is no crime punishable by our law: For a bare endeavour (which is the most that is alledged) to do such an act, is not punishable in the temporal courts. And the only reason why it is actionable, to say of a woman that she had a bastard, is, because she is punishable for it by 18 *Eliz.* c. 3. and 7 *Jac.* 1. c. 4. *Pepb.* 36. Nor is it actionable then, unless it appears the parish was charged. *Salk.* 694. So to say she keeps a bawdy-house, because the common law punishes a person. *Cro. Car.* 329. And yet it is not actionable to

call

call a woman a bawd, which is only an offence cognizable in the spiritual court. 1 *Ven.* 53.

If *Moore* should die, be pardoned, or acquitted, how can the other be guilty of a conspiracy? *Cro. El.* 701. 1 *Ven.* 234. 3 *Keb.* 111. 1 *Saund.* 228. 2 *Keb.* 476. 1 *Keb.* 284. 1 *Rel. Abr.* 111. *pl.* 5.

*Adjournatur*; and at another day *Reeve* in answer to the objections argued.

1. As to the *conatus* being uncertain. This goes to their own charge; from which we would not vary, but were obliged to lay it as we could prove it. We could not lay, that he said my lord did the act, when he only said he endeavoured to do it. The case in 1 *Rel. Rep.* 79. and 2 *Bulst.* 276. is not applicable to this. There it was in the plaintiff's power to have been more particular, and the words were not actionable without a special damage: he should have shewn a treaty and communication between himself and the lady; whereas he only says he intended and went about to marry her, and it does not so much as appear she knew any thing of the matter. In many cases it is actionable to charge a man with a bare attempt to do an unlawful act. *Cro. El.* 6. You lay in wait *intending* to murder *A.* You laid gunpowder under my window *minding* to burn my house. *Cro. El.* 191. You agreed to hire a man to kill me. 2 *Lev.* 205. 1 *Ven.* 323. In actions for words the plaintiff may make his own case; but we were obliged to follow the defendant, and lay the overt act as it was. If an indictment be imperfect, yet if it be recited in an action as it is, it will be sufficient. 47 *El.* 3. 16, 17.

2. They object, here is no overt act. Is not the affirmation one? Surely it is. But if it be not, yet we insist there was no occasion to lay any. The conspiracy is the *git* of the charge, and the other only matter of aggravation, of which the defendant may be acquitted, and found guilty of the conspiracy notwithstanding. 1 *Ven.* 304. 1 *Sid.* 174. 1 *Lev.* 125. So 1 *Lev.* 62. 1 *Keb.* 203, 254. A conspiracy to charge a man with being the father of a bastard child was held well laid, without any overt act. 27 *Aff. pl.* 44. 16 *Aff. pl.* 62. There were differences in opinion as to this matter formerly, but now the law is settled.

3. Say they, no judgment shall be given against *Kinnerfley*, because possibly *Moore* may be acquitted, and that will be an acquittal of both. This is arguing from what has not happened, and probably never will; for though *Moore* may have an opportunity to acquit himself, and is not concluded by the verdict as *Kinnerfley* is; yet as the matter now stands, *Moore* himself is found guilty; for the conspiracy is found as it is laid, and therefore judgment may be given against one before the trial of the other. As 4 *E.* 3. 34. *b.* *Bro. Conspiracy* 21. 1 *Ven.* 234. 3 *Keb.* 111. 24 *E.* 3. 73. *a.* *Pl.* 7 *Ann. B. R. Regina v. Herne*. There the indictment was, that he with *A. et multis aliis*, did conspire to accuse *B.* that *he* did attempt to commit sodomy. The grand jury found the bill as to *Herne*, with an *ignoramus* as to *A.* *Herne* was convicted, and then it was moved in arrest of judgment, that there being an *ignoramus* as to *A.* *Herne* could not be guilty of conspiring with him. But the whole court over-ruled the exception,

## Conspiracy.

exception, and said it was sufficient, being found that he, *cum multis aliis*, did conspire, and that it might have been laid so at first; and *Herne* was fined forty marks, and set in the pillory. My lord chief justice of the common pleas, that now is, was of counsel in that case; and he quoted a case where several were indicted for a riot, *cum multis aliis*, two only were found guilty; and it was objected, that there must be three to make a riot; but upon the *cum multis aliis*, judgment was given against the defendant.

4. Another exception is, that we have not averred that my lord is innocent of the fact charged upon him; it is expressly laid, that the defendants did *falsly* charge, which could not be, if the accusation was true. *Trin. 4 Ann. Regina v. Best, Salk. 174, 376.* indictment setting forth, that the defendants *falso conspiraverunt* to charge *A.* with being the father of a bastard child. On demurrer the exception was, that there was no averment that *A.* was not the father; and upon great consideration and search of precedents, the indictment was held good. A difference was taken in an indictment for perjury, where you must aver the oath false; and also in actions for a malicious prosecution, where it must appear the party was innocent, to intitle him to damages. *F. N. B. 114, 115. Rast. 117.*

5. The last exception is, that the offence charged is not punishable in the temporal courts. We deny that. Attempts of this nature have been punished, and so have conspiracies to do a lawful act, which is stronger than this case.

The whole court were unanimous in over-ruling all the exceptions: And *Powys J.* quoted a case in *Godb.* where a man was punished for an attempt to pick a pocket. And *Eyre J.* remembered captain *Rigby*, who was pilloried for an attempt to commit sodomy. And he quoted *Trin. 11 W. 3. Rex v. Sudbury & al.*, where four were indicted for a riot, two found guilty, and the other two acquitted; and this was held to be a discharge of them all, though it had been otherwise if it had been laid *cum multis aliis*. And *Hill. 2 Ann. Rot. 17.* is a case to the same purpose as the *Queen and Best. Et per Fortescue J. falsis allegantiis* is in the commission of *Oyer and Terminer*. And *Holt* chief justice held in *Best's* case, that an attempt to do an act cognizable in the spiritual court was punishable here. *In foro conscientie* the attempt is equal with the execution of it, and there is a great difference between being found Not guilty and not being found guilty. Whereupon judgment was given for the king; and afterwards the court proceeded to sentence, and told the defendant, nothing but his being a clergyman protected him from a corporal punishment. They fined him 500*l.* a year's imprisonment, and to find sureties for his good behaviour for seven years. In *Easter* term, 5 *Geo. Moore* was convicted and sentenced to stand in the pillory, suffer a year's imprisonment, and to find sureties for seven years. And this term *Kinnersey*, on affidavits of his being indisposed, moved the court that he might be admitted to the benefit of the rules. *Sed per curiam*, We never do it for one in execution, which differs from the case of persons committed for high treason, who have been bailed on account of illness.

Indict-

Indictment for conspiracy to indict for a capital offence was laid, "That the defendants did wickedly and maliciously (omitting the word *falsly*) conspire to indict and cause to be indicted *W. G.* for a crime or offence (omitting to specify *what* crime) liable by the laws of this kingdom to be punished capitally: And that they, according to the conspiracy aforesaid between them as aforesaid before had, did afterwards *falsly*, wickedly and maliciously indict him, &c." specifying the very indictment itself; which appeared to be for a capital crime. This is a good indictment; although the word *falsly* is not added to the first charge of the conspiring, nor the particular crime there specified: And although it is not laid that the said *W. G.* was *acquitted* of it. See the following case.

Indictment for a conspiracy good, tho' the word *falsly* is omitted in the first charge of the conspiring.

The defendants had been convicted of a *conspiracy* to charge a person with a *capital* felony; and the *record* of conviction had been removed up hither by *certiorari*; but *not* the persons of the defendants. And Mr. Serjeant *Davy* being ready, on behalf of the defendants, to move *in arrest of judgment*, Mr. *Gould*, *pro Rege*, objected to his going on with the motion; for that the defendants ought to be personally present. And he cited the case of *Rex v. Elizabeth Nicbolls*, (2 *Strange* 1227.) which was exactly the same offence as this; and it was agreed "That *after conviction*, the personal presence of the defendant is necessary upon such a motion as this." Serjeant *Davy*, for the defendants, attempted to explain away this rule; and urged that the defendants were safe in custody already, and therefore amenable to the justice of the court; and offered that the defendant's clerk in court should undertake to bring the defendants up, at the defendants own expence, in case the objection should not prevail. But the secondary of the crown-office being applied to, alleged "That the rule was as Mr. *Gould* had asserted." The court held this to be a fixed and invariable rule of practice in this court, "That the defendants must, *after conviction* of such an offence as this, *be present in court*, if they would move in arrest of judgment." Serjeant *Davy* finding the opinion of the court, and the allegation of the secondary of the crown-office to be so directly against him, as to the absolute necessity of the *personal presence* of the defendants, prayed a *habeas corpus* to bring up their bodies; which was granted: And he afterwards renewed his motion, and had the defendants in court. Note—This case of a conviction differs from that of a special verdict, where the presumption of innocence may be supposed to *continue*, and therefore the personal presence of the defendant is *not* necessary at the argument of it.

2 Bur. Rep. 930. Hil. 33 Geo. 2. Rex v. Spragg and another.

Afterwards in *Easter Term*, the defendants (who were father and daughter) being in court, it appeared that they had been convicted of a CONSPIRACY, upon the following indictment; That *John Spragg* of, &c. mill-wright, and *Mary-Elizabeth Spragg* of, &c. single woman, being persons of an evil mind and wicked disposition, and devising and intending to deprive one *Walter Gilmore* of his good name, credit and reputation; and also to subject the said *Walter Gilmore*, without any just cause, to the loss of his LIFE, and forfeiture of his goods and chattels, lands and tenements, upon the 31st day of *July* in the 30th year of the reign of our

2 Bur. Rep. 993.

## Conspiracy.

Lord *George* the Second, king of *Great Britain*, and so forth, and at divers other times and days theretofore, at *New Sarum* in the county of *Wilts*, and at divers other places within the county aforesaid, *wickedly* and *maliciously* did CONSPIRE, combine and agree among themselves, *to indict and cause to be indicted* the said *Walter Gilmore*, for a crime or offence liable by the laws of this kingdom to be punished *capitally*, and to prosecute the said *Walter Gilmore* upon such indictment. And the jurors aforesaid, upon their oath aforesaid, *also present*, That the said *John Spragg* and *Mary-Elizabeth Spragg*, according to the conspiracy, *combination and agreement* aforesaid *between them as aforesaid* before had, afterwards, to wit, on the said thirty-first day of *July* in the said thirtieth year of the reign of our said now lord the king, at the session of *Oyer and Terminer* of our said lord the king, then holden at *New Sarum* aforesaid in and for the said county of *Wilts*, before the honourable Sir *Richard Adams* knight, one of the barons of his majesty's court of Exchequer, *Edward Willes* one of his said majesty's serjeants at law, and others their fellows, justices of our said lord the king, assigned by letters patent of our said lord the king under the great seal of *Great Britain* [*prout* in the said letters patent commissioning them to hear and determine] by the oath of [naming the grand jury] good and lawful men of the county aforesaid, then and there sworn and charged to enquire for our said lord the king for the body of the said county, falsely, *wickedly* and *maliciously*, and without any reasonable or probable cause, *did indict* and cause to be indicted the aforesaid *Walter Gilmore*, by the name of *Walter Gilmore* late of the borough and town of *Marlborough* in the county of *Wilts*, bookseller and stationer, for that he unlawfully and unjustly devising and fraudulently intending to get and obtain to himself unjust lucre, and to defraud our present sovereign lord king *George* of certain duties, granted by certain statutes lately made and provided, and payable to our said lord the king, and to diminish the public revenue in this behalf, after the making the statutes in such case lately made and provided; and after the second day of *August* in the year of our Lord one thousand seven hundred and twenty-six, that is to say, on the third day of *May* in the twenty-ninth of the reign of our sovereign lord *George* the Second, by the grace of God of *Great Britain, France and Ireland* king, defender of the faith, at the borough and town aforesaid in the county aforesaid, by force and arms, unlawfully, knowingly, fraudulently and feloniously did counterfeit and forge a stamp, to resemble a certain stamp which had before been there duly provided, made and published in pursuance of the statutes in such case made and provided, and which was then and there used in pursuance of the said statutes, to stamp vellum, parchment and paper charged, by virtue of the said statutes in such case made and provided, with the payment to our said now lord the king, of the duties of sixpence and sixpence, thereby then and there to defraud our now said lord the king of the duties of sixpence and sixpence; granted by the statutes in that behalf lately made and provided, and then payable to our now said lord the king; against the form of the statutes in such case made and provided, and against the peace of our said now lord the

the king, his crown and dignity. And also [laying, by another count, the counterfeiting the two stamps, by the said *Gilmore*, another way:] And also that [it then goes on, and charges that they indicted *Gilmore* with knowingly uttering two such counterfeit sixpenny stamps.] And that the said *Gilmore*—[laying the uttering them another way.] And that the said *Gilmore*—[Then follow other counts laid by them against him, for counterfeiting and knowingly uttering *treble sixpenny* stamps.]

The present defendants, *Spragg* and his daughter, were convicted at the assizes, upon this indictment for the conspiracy, laid in the manner just mentioned. However, no judgment was there given; but it was adjourned at the first and also at the subsequent assizes, “*quia curia nondum advi-  
satur.*” The record of this conviction was at first removed, without their persons: For which reason the former motion could not proceed. But this omission was afterwards rectified: The record was removed by *certiorari*; and the defendants were also brought up by *habeas corpus*. Whereupon, on Saturday 26th April 1760, Mr. Serjeant *Davy* moved for the opinion of this court; or (in effect) in arrest of judgment, (the defendants being present in court.) He made two objections; viz. 1st, It is alledged in the charge itself, “That the defendants conspired falsely to indict *Gilmore.*” 2dly, Nor does it appear in the said charge, of what particular crime or offence they conspired to indict him. ’Tis only charged in general, “That they did wickedly and maliciously (without adding *falsly*) conspire to indict and prosecute him for a crime or offence liable to be capitally punished by the laws of this kingdom.” Both these matters are essentially necessary, and cannot be supplied by any thing that goes before or comes after.

First point. Conspirators are those only who confederate themselves falsely and maliciously to indict, or cause to indict. The statute of 33 Ed. 1. (intituled “A definition of conspirators”) defines conspirators in these very terms. 1 *Hawk. P. C.* 189. 2 *Inst.* 562. *Register* 134. a. b. 135. accordingly, *F. N. B.* title *Writ of Conspiracy*, folio 114, in old edit. (260 in *Hale’s* edit.) accordingly. So *Rastal’s* Entries 123 to 127, title *Conspiracy*. So *Co. Entries* 109. tit. *Conspiracy*. And *Pulton* 232 a. 233. b. but particularly 232. b. title, *Writ of Conspiracy*. So likewise it is said by Justice *Richardson*, in *Tailor and Towlin’s* case, *Godbolt* 444. All these authorities prove that the words “falsly and maliciously” are necessary even in a count. *Hale’s Hist. P. C.* 2d vol. p. 183. says, “That the same certainty is required in an indictment for goods, as in trespass for goods; and that certainty is much more necessary in an indictment than in trespass.” 2 *Hawk. P. C.* 225. c. 25. § 59. proves also that indictments must be certain. *West’s Precedents*, 2d part, title, *Indictments and Offences*, p. 102. b. § 97. is an indictment for a conspiracy falsly, &c. to indict. The present indictment is only “That they wickedly and maliciously conspired to indict this man: Which may be true; and yet it might not be falsly. It must be both malicious and false; to make it indictable as a conspiracy. The offence consists in the unlawful agreement to indict falsly and maliciously: And such an unlawful agreement “maliciously to indict falsly,” would be indict-

able, though never carried into execution. But nothing more than the malicious agreement "to indict this man" appears in the charge itself of this indictment.

Second point. As the charge itself is only general, the setting forth the indictment *verbatim*, afterwards, can not help this defect in the charge. There are two instances of villainous judgment being awarded. 27 *Affize*, pl. 59. fo. 141. b. (by inquest;) 46 *Affize*, 11 fo. 307. a. (by indictment.) But in neither of them does it appear that the conspiracy was for a capital offence: It is only said "That they were *attainted of conspiracy*." Hawk. P. C. lib. 1. c. 72. § 9. under the title *Conspiracy*, says, "That he, who is convicted at the suit of the king of a conspiracy to accuse another of a matter which may touch his life, shall have the villainous judgment, which is given by the common law, and not by any statute." And the villainous judgment is certainly the proper judgment, where the conspiracy is "to indict for a capital crime." But then the capital offence ought to be explicitly set forth. "A crime liable to be punished capitally is not enough, without specifying what capital crime. For this is a matter of law; and therefore the jury are not the proper judges of this. And the want of this allegation, if it be omitted in the charge of the conspiracy itself, can not be supplied by any thing that proceeds or comes after. The conspiracy itself is the offence indictable, though no indictment be drawn up or found, or any thing done in pursuance of such conspiracy. And if there was no such conspiracy, then there could be no indictment according to it. So that the charge itself is here insufficient. But if these subsequent words could be connected with it, yet at most it is a charge by way of implication only, not a clear direct positive charge. He therefore insisted upon these two things; 1st, This is a charge of a mere conspiracy "to indict" only; not of a conspiracy to indict falsely: and if it be not good, no judgment can be given upon this insufficient indictment. 2dly, It cannot be made good by any implication, if not positively and directly alleged at first. 2 Hawk. P. C. p. 227. c. 25. § 60. is express to this purport. Hale H. P. C. 2d vol. 182, 183. 4 Co. 44. b. Vaux's case (for poisoning Nicholas Ridley.) Stamford P. C. lib. 2. title *Enditement*, c. 31. p. 96. b. is express "that an indictment is not good which must have an argument or implication to make it it good." Certainty in indictment is the subject's security. The precedents in *Tremaine* 82 and 85. are not such precedents as that any thing can be collected from them.

Mr. Gould *contra pro Rege*. The term "conspiracy" is always taken in *mala parte*. So it appears by the Register. There is but one count in this indictment; and the whole of it must be taken together as one charge: it is not to be separated and divided, one part of it from another. It consists of the inducement, the charge itself, and the recited indictment, (which is set forth *verbatim*). This is an indictment at common law. 2 *Inst.* 562. says, "The statute of 33 (or as he says it really was, the 21) Ed. 1. intitled, a definition of conspirators, is an affirmation of the common law." In 6 *Mod.* 186. *Rex et Regina v. Best*, per Holt, "A conspiracy 'late loquendo,' or a confederacy to charge one falsely (without more)

“ more) is a crime ; though it be not an indictment for a formed conspiracy, *strictly* speaking ; which requires an infamous judgment and loss of *liberam legem*. No villainous judgment has been given, since the time of *E. 3.* In *F. N. B. fo. 253. 8vo Edit. of 1704.* (and also of 1718) the form of the writ is “ *Ostensusur quare* conspiratione inter eos *præhabita*, “ *præfat’ A. de, &c. indictari*, et ipsum ea occasione capi, &c. *falso et maliciose* procuraverunt ; ad &c. et contra &c. provis.” So that there the “ *falsly and maliciously*” is applied to the indictment, not to the conspiring. 2 *Inst.* 562. The case of *Welbye* (for citing in the spiritual court) does not charge the conspiracy to be false, but *only* malicious. 1 *Hawk. P. C. c. 72. p. 189* to 191. shews, if there be a conspiracy, it is punishable in an exemplary manner. Conspiracy, *ex vi termini* only, is indictable. *Tremaine’s Entries* 85. *Rex v. Freeman*, only charges, “ That illicitè, diablicè, nequiter et maliciose conspiraverunt (to charge with an attempt “ to bugger) *without the word falso.*” It is not necessary to apply the “ *falso et maliciose*” to the conspiring. So that the “ *falsly, wickedly and maliciously,*” does here come in, in its proper place. Consequently, here is *sufficient certainty*. It appears, and is found, “ That they did wickedly and maliciously conspire falsly to indict this “ man.” And this is an indictment at common law. 3 *Inst.* 143. in making the lawful acquittal of the party grieved, a requisite to constitute the guilt of the offender, lays down a proposition which is not true. And this appears clearly by *Hawk. P. C. lib. 1. c. 72. p. 189, 190.* and is confirmed by the *Poulterer’s* case in 9 *Co.* 56. And 9 *Rep.* 56. *b. Les Poulterers* case, mentions the commission ; which does not speak of conspiracies *executed*, but only of “ *conspiracies*” in general. As to the second objection, It is an offence undoubtedly “ to conspire to indict a person falsly and maliciously, of some capital crime, in *general* ; and then according to such conspiracy, afterwards *actually* to indict him falsly and maliciously, for a particular capital crime.” The indictment concludes, “ *contra form’ statut’ :*” and therefore the court may pronounce the villainous judgment, if they think proper.

Mr. Serjeant *Davy*, in reply :—There is a distinction between a writ of conspiracy, and an indictment for a conspiracy. In an *action*, the damage is the gist of the action ; and therefore the writ and declaration must charge, “ That he was indicted and *sustained damage :*” But that is not necessary in an indictment ; which is an offence against the public. And this distinction explains lord *Coke’s* meaning in 3 *Inst.* 143. Its being *after verdict* or *before verdict* makes no difference. *Hale’s 2 H. P. C.* 193. is express, “ That a defective indictment is *not aided by verdict.* For an indictment is not within any of the statutes of *jeofails*. None of them extend to an indictment.” It is not denied “ That this is an indictment for a mere conspiracy only ;” and nothing more : and there is no allegation of its being a *false* one. Therefore the indictment is bad : and no judgment can be given upon it.

Lord *Mansfield*—We’ll think of it. The argument turns upon its being an indictment for a conspiracy only.

Mr.



Mr. Justice *Denison*.—In the case of *Moor v. Kinnerley*, it was holden “That an indictment would lie for a *conspiracy only*.” *Curia advisare vult*. N. B. The defendants (who had been brought into court by virtue of the *habeas corpus*) were now committed to the *Marshal*, while the court took time to consider. On *Wednesday 14th May 1760*, lord *Mansfield* delivered the opinion of the court. He stated the case, and the objections: (which, he said, had been very ingeniously argued.) But, That they all agreed, that in reality there was no colour for the objections. If this had been a bare *unexecuted* conspiracy, which had *never taken effect* (as that in *Kinnerley’s* case was) the objection might have had *more weight* (though he gave *no opinion*, he said, *what degree* of weight they might have had even in that case.) But here is much *more* than a *conspiracy without effect*. Here is an *overt act* laid, as I may call it; and it is found “That the defendants, according to the *conspiracy, combination and agreement between them before had*, actually did, *falsely, wickedly and maliciously, and without any reasonable or probable cause, indict this man;*” and the very *indictment itself* is particularly *specified* in the present one. So that this was a *complete* formed conspiracy, *actually carried into execution*. We are all very clear that there is no colour for the objections, in the present case; and that the rule ought to be discharged. *Per Cur.* The rule to shew cause why the judgment should not be arrested, was discharged.

2 Bur. Rep.  
1027.

Punishment  
for a conspi-  
racy.

Afterwards in Trinity term, Mr. Justice *Foster* (in the absence of Mr. Justice *Denison*) pronounced the sentence upon the defendants; whose offence (of *maliciously conspiring to indict*, and actually *falsely indicting* a person of a capital *crime*, whereof he was innocent) would have been in point of real guilt, an aggravated and atrocious murder, he said, if it *succeeded* according to their intention; and even now deserved a very exemplary punishment, notwithstanding it had *not* succeeded according to their wish. *John Spragg* (the father) was sentenced to be remanded to the prison of court, for one month; to be set twice in and upon the pillory (for an hour each time) once at *Charing Cross*, and again at the *Royal Exchange*; to be imprisoned, in the prison of this court, for two years from the end of the said month; to pay a fine of 50 *l.* to the king; to find security for his good behaviour for three years (himself in 40 *l.* and each security in 20 *l.*) and to be committed *quousque*. *Mary*, the daughter (being considered by the court as less criminal, partly from her youth, and partly as she was under the direction and influence of her father) was only committed to the custody of the marshal, to be imprisoned for the space of six months from this time. Note—They had been, both of them, *already* in custody, (in town and country) near a year and a half.

It is clear, that those who are convicted of conspiracy at the suit of the party, shall have judgment of fine and imprisonment; and to render the plaintiff his damages. 1 *Haw.* 193.

Also it is certain, that he who is convicted, at the suit of the king, of a conspiracy to accuse another of a matter which may touch his life, shall have judgment that he shall lose the freedom and franchise of the law (whereby he is disabled from being put upon any jury, or to be sworn as

a wit-

a witness, or even to appear in person in any of the king's courts) and also that his houses, lands and goods shall be seized into the king's hands, and his houses and lands stripped and wasted, his trees rooted up, and his body imprisoned. And this is commonly called *villainous* judgment, and is given by the common law, and not by any statute, and is said generally in some books to be the proper judgment upon every conviction of conspiracy at the suit of the king, without any restriction to such as endangered the life of the party; but this point does not seem to be any where settled. 1 *Haw.* 193.

## Constable.

CONSTABLE is used in different senses in our common law. And first, the Constable of *England*, who is also called Marshal, *Staundf. Pl. Cor. f. 65.* of whose authority and dignity a man may find many arguments and signs, as well in the statutes as in the chronicles of this realm. His power consists in the care of the common peace of the land, in deeds of arms, and matters of war. *Lamb. Duty of Constables, numb. 4.* where-with agrees the statute of 13 R. 2. *cap. 2. stat. 1.* Of this officer or magistrate, *Gwyn*, in the preface to his readings, saith to this purpose: The court of the constable and marshal determines contracts touching deeds of arms out of the realm, as combats, blazons of armory, and such like; but he hath nothing to do with battel in appeal, nor generally with any other thing that may be tried by the law of the land. See *Fortescue, cap. 32.* This office heretofore belonged to the lords of certain manors *jure feudi*; and why it is discontinued, see *Dyer 285. pl. 39.* But of this magistracy (saith *Lambard*) were drawn these inferior constables, which we call constables of hundreds and liberties, and first ordained by the statute of *Winchester*, 13 *Ed. 1.* which appoints for the conservation of the peace, and view of armour, two constables in every hundred and liberty; and these are at this day called high constables, because the increase of people and offences hath again under those made others in every town, called *petty constables*, who are of the like nature, but of inferior authority to the other. *Termes de la ley.*

As to high and petty constables, they appear to have been officers of great antiquity; for by the laws of king *Alfred*, the freemen were to distribute themselves into decennaries and hundreds, and every ten freeholders chose an annual officer, whom they called constable, borsholder, tithingman or headborough, as head of the decennary; these, in every hundred where there was a feudal lord, were sworn in, and admitted by the lord or his steward, in his leet; but where there was no such feudal

dal lord, the sheriff in his turn had the swearing and placing of them in; also if there was no feudal lord of the hundred, an annual officer was chosen, who was to preside over the whole hundred, who was called the high constable; but if the hundred was feudal, as it often anciently was, then such lord of the hundred administered the office himself. 1 *Bac. Abr.* 438.

At common law, before the making of the statutes by which justices of peace were ordained to keep the peace, the *chief justice of England* was appointed by the king, and he had authority, and was ordained to determine matters touching the crown, and for *conservation of peace throughout the realm*, and he thereby is the chief justice of peace. Also, by the common law, before there were any justices of the peace, *constables of every town* were keepers of the peace within their towns. *Kitch. of Courts* 96.

An *high constable* is not such an officer, or conservator of the peace, whereof the common law takes any notice; for he is not mentioned in any book; *per Anderson. Cro. E. 375. pl. 25. Hill. 37 Eliz. in the case of Sarrock v. Hannamer.*

*High constables* were not *ab origine*, but came in with justices of peace; *per Twisden J. Mod. 13. pl. 26. Mich. 21 Car. 2. B. R.*

As to the *antiquity* of the office of a constable, it seems to be the better opinion, that both constables of hundreds, which are commonly called *high constables*, and also constables of tithings, which are at this day commonly called petit constables or tithingmen, and were anciently called chief pledges, were by the common law, and not first ordained by the statute of *Winchester, cap. 6.* as it is holden by some that they were; for that statute does not say there shall be no such officers constituted; but clearly seems to suppose that there were such before the making of it. 2 *Hawk. P. C. 61. c. 10. sect. 33.*

By the Stat. of *Winchester, 13 Ed. 1. st. 2. c. 6. [A. D. 1285]* "In every hundred and franchise two constables shall be chosen to make the view of armour: And the constables afore said shall present before justices assigned such defaults as they do see in the country about armour, and of the suits of towns, and of highways, and also shall present all such as do lodge strangers in uplandish towns, for whom they will not answer."

Who is obliged to serve as constable, and how punished for not serving.

It seems agreed, that all sworn attornies, and all other attornies, and all other officers, whose attendance is required in the courts of *Westminster-Hall*, are not obliged to serve or execute any inferior parish office, and that where they are chosen, though by a particular custom, with respect to their estates or otherwise, they may have a writ of privilege, for no custom shall be intended to be more ancient than the usages of those courts, and therefore shall give way to them. 1 *Bac. Abr.* 440.

So if an alderman of *London* has an house at *D. in Essex*, and he as an inhabitant there is chosen constable, yet he is not compellable to serve, for that as an alderman he is bound to be present in the city, for the good government thereof. *Cro. Car. 585. 1 Jones 462. S. C.*

But

But a captain of the king's guards, being presented to serve as constable, in pursuance of a custom in respect of his lands in a town, cannot claim this privilege; for though by this office he is bound to a personal attendance on the king, yet such office being of late institution, shall not prevail against an ancient custom. See *Keb.* 309. 1 *Sid.* 272, 355. 1 *Lev.* 233. 1 *Keb.* 933.

Yet if such an officer, or a gentleman of quality, who hath no such office, or a practising physician be chosen constable of a town, which has sufficient persons besides to execute this office, and no special custom concerning it, perhaps he may be relieved by the *King's Bench.* 2 *Hawk.* 63.

By stat. 5 *H.* 8. cap. 6. The wardens and fellowship of surgeons in-franchised in *London*, and all barber-surgeons admitted and approved according to the statute made in that behalf, not exceeding the number of twelve, shall be discharged of constableness, and watch, &c.

By stat. 33 *H.* 8. cap. 43. The president of the commonalty and fellowship of physick in *London*, and the commons and fellows of the same, shall not be chosen constables in the city of *London*, or suburbs of the same, &c.

By stat. 6 *W. & M.* cap. 4. All persons using the art of an apothecary, who have been brought up and served as apprentices in the said art for seven years, according to the statute of 5 *Eliz.* shall be freed and exempted from the office of constable.

*A.* was indicted for not taking on him the office of high constable; and the question on a special verdict was, whether a tenant in ancient demesne may be made constable of an hundred, which reaches farther than the demesnes, and it was adjudged that he might. 2 *Shew.* 754. 1 *Vent.* 344. *S. C.*

By stat. 1 *W. & M.* c. 18. sect. 7. If any person dissenting from the church of *England*, shall be chosen constable, and shall scruple to take upon him the office, in regard of the oaths, or any other matter required to be done in respect of such office, he may execute it by a sufficient deputy by him to be provided, to be allowed by such persons, and in such manner, as such officer should have been allowed. And by sect. 11. of the last mentioned statute, every teacher or preacher in holy orders, or pretended holy orders, in a congregation tolerated by law, shall from the time of his subscription and taking the oaths, be exempted from the office of constable.

By stat. 10 & 11 *W.* 3. c. 23. sect. 2, 3. The prosecutor of a felon to conviction, or person to whom he shall assign the certificate thereof, shall be discharged from the office of constable.

The privilege of exemption from being sworn constable extends to a parliament man's servant; agreed and admitted by *Twifden* justice; but he said he did not think it extended to his tenant. *Mod.* 13. pl. 36.

By stat. 5 *Hen.* 6. c. 6. The surgeons of *London* are exempt from bearing the office of constable; and the act likewise extends to barber-surgeons approved and admitted according to the statute of 3 *Hen.* 8. c. 11. so that they exceed not the number of twelve persons.

Mr. serjeant *Hawkins* says it seems, that by the equity of this statute, and the ancient custom of the realm, all surgeons have been allowed the like privilege. 2 *Hawk. P. C.* 64.

A surgeon was indicted for refusing to serve the office of constable, whereupon a *noli prosequi* was moved for and granted *nisi*, and the report says, that no cause was shewn, as ever he heard. *Comyn. Rep.* 312. *pl.* 161.

A person duly elected constable, refusing to take upon him the office, may, if present, be fined by the court; and if absent, on having a certain time and place appointed him for the taking of the oath before a justice of peace, may, after notice of such appointment and presentment of the next court, be amerced. *Cro. Car.* 567. *Co. Ent.* 572. 5 *Mod.* 130. *Salk.* 175. 8 *Co.* 38.

Also in either case he may be indicted, either before justices of *oyer and terminer*, or at the sessions of the peace, but such indictment ought specially to set forth the manner of every such election, appointment, notice and refusal, and before whom the court was holden. 2 *Hawk. P. C.* 64.

Neither is an indictment, for not finding a sufficient person to serve the office of constable good, unless that such indictment shew that the party refused to serve it himself. 1 *Keb.* 416. 2 *Hawk. P. C.* 64.

It seems by the better opinion, that a custom in a town, that the inhabitants thereof shall serve the office of a constable by turns, is good and that the objection, that by such means, it may come to a woman's turn to serve, is of no force, since she is allowed to make a deputy, or procure one to serve for her, who shall be considered as the proper officer. 2 *Keb.* 304. 1 *Sid.* 355. 2 *Hawk. P. C.* 63. *Cro. Car.* 389. *cont.*

By whom  
constables  
are chosen,  
appointed,  
sworn and re-  
moved.

The office of constable being necessary for the preservation of the peace, justices of the peace have, by an uninterrupted usage, not now to be disputed, taken upon them not only to swear constables who have been chosen at a torn or leet, but also to nominate and swear constables, where none have been sworn at such courts, through the neglect of the sheriff or lord, and also to displace those who have been so chosen; and this point has been carried so far as to allow the sessions of the peace to swear one constable who had been elected at the leet, and unduly rejected by the steward, who had sworn another in his place. 1 *Bac. Abr.* 439.

And by the stat. 13 & 14 *Car.* 2. *cap.* 12. *par.* 15. reciting, "That the laws and statutes for apprehending rogues and vagabonds, had not been duly executed, sometimes for want of officers, by reason lords of manors do not keep court leets every year for making of them; and it is enacted, "That in case any constable, headborough or tithingman, shall die, or go out of the parish, any two justices of the peace may make and swear a new constable, headborough, or tithingman, until the lord shall hold a court, or until next quarter-sessions, who shall approve of the said officers so made and sworn as aforesaid, or appoint others, as they shall think fit; and if any officer shall continue above a year in his or their office, that then in such case the justices of the peace in their quarter-sessions may discharge such officers, and may put another fit person in his or their place, until the lord of the manor shall hold a court as aforesaid."

The

The justices of the peace of the county of *Northampton*, at their general sessions choose a constable for *Holmby*, and for not coming in to take the oath, proceeded against him; which proceedings being removed by *certiorari* into *B. R.* it was moved on affidavits, that there had been a constable there for fifty years before, and that he might be discharged, alledging likewise that *Holmby* was a privileged place, and that all the inhabitants were the duke of *York's* tenants. But the court held that they could not discharge him on motion, and said, that they must determine the matter by action of false imprisonment, or some other way, and inclined strongly, that he could not any way be discharged; for *per cur'*, though originally constables were chosen in leets; yet the constable being an officer, whose duty it is to keep the peace, the justices may choose him in cases of necessity; as in the hamlets about the *Tower*, the justices, by reason of the increase of buildings where there was formerly but one constable, did choose five: and it was ruled they might do so; and they seemed to incline, that though formerly there had been none, yet they might choose one, if they should think it convenient. 1 *Bac. Ab.* 439. 1 *Mod.* 13. *S. C.* 2 *Keb.* 557. *S. C.*

Information against *K.* for refusing to take the oath of a constable of the hundred, been chosen in the leet. The defendant pleads that *W.* is an ancient borough, and that they have a leet there, and used to choose their own officers, &c. within the borough. The question was, whether the living within the jurisdiction of an inferior leet, should exempt a man from being chose high constable in the hundred. *Hale Ch. J.* said the case will be very different if this be really a borough, and if it be an upland town; for formerly in *England* every hundred used to send their jury, and every borough to send four men of their own, and constables were before the statute, but that gives them view of armour; and he said that the superior leet shall not meddle in the inferior of matters inquirable there, unless it be in case of omission; but he said, a constable of an hundred was an article that the inferior court could not meddle in, because it is an office that extends beyond their jurisdiction, and so judgment was against the defendant *nisi*. *Freem. Rep.* 348, 349. *pl.* 443. *Mich.* 1675. *Keen's case*.

And an information was brought against *King* for refusing the office of a constable of *Nortonferris*, within which was an ancient borough that had a leet, *viz.* *Wincanton*, and he pleaded that he being within, and resident in the leet of the borough, ought not to do the office of constable of the hundred; but judgment was given against him; and it was said, that if there were a special custom to be discharged, it might be good. 3 *Keb.* 197, 230, 231. *Trin. & Mich.* 25 *Car.* 2. *B. R.* *King v. King*.

A special verdict found that within the manor of the hundred of *Farnham*, there are several other manors belonging to divers lords, the inhabitants whereof used to be elected for the said hundred; they find also that there is the manor of the town of *Farnham*, within the manor of the said hundred, in which there is a court-leet, and that the defendant is an inhabitant within the said town of *Farnham*, & non alibi; and that no inhabitant of the town of *Farnham* ever served as high constable for the hundred of *Farnham*. The question arising upon the special verdict was, whether the

*defendant being in a particular leet, is excused from serving as high constable of the hundred? And on debate the court held, that he is not excused.* 11 Mod. 215. pl. 3. Pasch. 8 Ann. B. R. the Queen v. Jennings is a different case.

S. was presented constable by the homage of a leet in Essex, the steward refused to swear him; and nominated and swore in his place one R. The justices of peace at the quarter sessions, upon an examination into this matter, ordered that S. should serve the office and swear him accordingly; this order was removed by a certiorari, and exception was taken to it, that the justices had intermeddled in a matter of which they had no cognisance; for the appointment and swearing of a constable did properly belong to the lord of the leet. *Per Cur.* The election of a constable properly belongs to the homage, and though the justices of peace have not originally the making of a constable, yet *this is a matter of the peace within their general jurisdiction*, and they have power to examine this matter at the sessions; and as to the swearing of a constable, any single justice of the peace may do it; and the order was confirmed. 2 Jones 212. Trin. 34 Car. 2. B. R. The King v. Stephens.

Sessions may choose a constable, and the order here appointing him to take the oaths is an election of him, &c. *Per tot. cur.* He may be a person not living within any leet. And *per Holloway J.* they might have compelled him to take the oaths by increasing his fine. Comb. 20. Trin. 2 Jac. B. R. Anon.?

The steward of the leet usually certifies under his hand what person is chose, which certificate is carried to a justice of peace, and if the party refuse, the justice sends his warrant to compel him, but the steward may, during the court, swear the constable as well as a justice of peace after. 5 Mod. 128. Mich. 7 W. 3. in the case of Fletcher v. Ingram.

At common law, all constables were chosen at the leet, and where there is no leet, at the torn, but whether by the steward or the homage has made a great question, but without question, a corporation of common right might not choose a constable; by custom they may, but then they must prescribe for it. *Per Holt.* 2 Salk. 502. pl. 2. Mich. 8 W. 3. B. R. The King v. Barnard.

The village of C. having no constable, the justices by order of sessions appointed one to serve there; and *per Holt Ch. J.* The justices have all along exercised this power, and the court will intend they have a sufficient authority for it, but the 13 & 14 Car. 2. cap. 12. gives them authority to do it only in particular cases. 1 Salk. 175, 176. pl. 2. Trin. 11 W. 3. B. R. The village of Charley's case.

High constables are removable as well as petty constables, and the justices of peace at sessions are the best judges of that matter; *per cur.* 1 Salk. 150. pl. 19. Pasch. 4 Ann. B. R. in the case of the Queen v. White.

The mayor of A. set up a custom, that the court-leet there ought to make a list every year of five persons to be presented to the mayor, and that he ought to choose

*choose one out of them for constable, and that the jury should choose the other out of the remaining four*: Now this year the jury had made *no list*, but the parishioners *chose constables themselves*. Upon the mayor's applying to the sessions, they made an *order of discharge* of one of the constables, and *that the mayor's constable, whom he nominated in default of the jury's giving him a list, should be confirmed*. The court now quashed this order, for they said, the only statute that gives the justices power at all, in relation to constables, is the statute of 13 & 14 Car. 2. cap. 12. s. 15. And that act gives justices power only to put in constables in default of the court leet, but does not empower them to discharge constables already put in. Accordingly the order was quashed. *Bernard. Rep. in B. R. 51. Pasch. 1 Geo. 2. The King v. Burden and Wakeford.*

By stat. 1 Geo. 1. st. 2. c. 13. High constables are to take the oaths of allegiance, supremacy and abjuration, as other persons who qualify for offices.

Stat. 7 Jac. 1. cap. 5. If any action is brought against a constable, for any thing done by virtue of his office, he, and also all others which in his aid, or by his command, shall do any thing concerning his office, may plead the general issue, and give the special matter in evidence, and if he recovers he shall have double costs.

How for a constable is favoured and protected in his office, or punished for neglect of duty.

Stat. 21 Jac. 1. cap. 12. sect. 6. An action brought against a constable, headborough, or tithingman for any matter done by virtue of their office, shall be laid in the county where the fact was committed, and not elsewhere.

Stat. 34 Geo. 2. cap. 44. sect. 6. No action shall be brought against any constable or other person acting by his order, or in his aid, for any thing done in obedience to the warrant of a justice of the peace, until demand hath been made, or left at the usual place of his abode, by the party, or by his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demand: And if after compliance, any such action shall be brought, without making the justice who signed such warrant defendant, on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. And if such action be brought jointly against the justice and constable; on proof of such warrant, the jury shall find for the constable, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict be given against the justice, the plaintiff shall recover his costs against him, to be taxed in such manner by the proper officer, as to include such costs as the plaintiff is liable to pay to such defendant, for whom such verdict shall be found as aforesaid.

Seet. 8. "No action shall be brought against any constable, but within six months after the act committed.

Stat. 27 Geo. 2. cap. 20. sect. 2. The constable executing a justice's warrant for levying a penalty, or other sum of money directed by any act of parliament, by distress, may deduct his own reasonable charges of taking, keeping,



## Constable.

keeping, and selling the goods distrained; returning the overplus on demand, after such penalty or sum of money, and charges deducted.

C. was indicted, for that a *burglarly was committed in the night by persons unknown*; and J. S. gave notice to him being constable, and required him to make hue and cry, and he refused, but because he did not shew the place of notice, the party was discharged. *Cro. E. 654. pl. 16 Hill. 41 Eliz. B. R. Crowther's case.*

Another exception was taken to the matter of the indictment, because it has been adjudged, that an hundred shall not be charged with a robbery committed in the night, for they be not bound to give attendance: no more ought a constable to do it in the night. But all the court held the indictment to be good notwithstanding; for it is not like the case of an hundred, because it is the *constable's duty upon notice given unto him presently to pursue*. *Cro. E. 16, 17. pl. 16. Hill. 41 Eliz. Crowther's case.*

Several constables were indicted for *refusing to execute the warrant of a justice of peace, directed to them to apprehend one for a contempt*, and the indictment was allowed. *2 Roll. Rep. 78. Hill. 16 Jac. B. R. Coleman's case.*

A constable is not *suable out of the county* for what he does in execution of this office. *Held per cur'. Sty. 393. Mich. 1653. B. R. Anon'.*

The defendant being a constable was indicted, for that he *contemptuously and voluntarily neglected to execute diversa præcepta et warranta directed to him* by justices of peace under their hands and seals, but it was quashed, because it did not set forth the nature and tenor of the warrants, for, unless the defendant can know what particularly he is charged with, he cannot tell how to make his defence. *Vent. 305. Hill. 28 & 29 Car. B. R. Burrough's case.*

In an *habeas corpus* and *certiorari* for the body of J. S. who had been imprisoned for not paying of a fine of 20*l.* set at the quarter-sessions, the return was, that he being constable, and demanded by the court to present an *highway*, which was sworn before him by two witnesses to be out of repair, said in contempt of the court, that he *could not present it*; for which and certain other contemptuous words, a fine was set on him. The court were of opinion, that the fine was not well set; for constables are to present upon their own knowledge, and the two witnesses should have been carried to the grand jury; for the constable was not obliged to present upon their testimony. *Vent. 336. Pasch. 31 Car. 2. B. R. Anon'.*

Motion to quash an indictment against divers inhabitants in Derby, for refusing to meet and make a rate upon the several parishes in Derby to pay the constables tax; first, because they are not compellable, but the statute only says that they may, so they have their election, and no coercion shall be; *sed non allocatur*; for may in the case of a publick officer is tantamount to shall, and if he does not do it he shall be punished upon an information, and though he may be commanded by a writ, that is but an aggravation of his contempt; but the court refused to quash it. *Skinner 370. pl. 17. Mich. 5 W. & M. in B. R. The king v. The inhabitants of Derby.*

If

If a justice of the peace adjudged that to be an offence which is no offence, the inferior officer shall answer, as if one be adjudged the putative father of a bastard, where after it appears to be born in matrimony, this is void, & coram non judice, &c. Per Holt Ch. J. *Skin.* 445. *Trin.* 6 W. & M. in *B. R.* In case of *Crump v. Holford*.

A leet may set a fine on a constable, but the sessions cannot. 5 *Mod.* 96. *Trin.* 7 W. 3. in a *nota* at the end of the case of *The King v. Harpur*.

False imprisonment against a constable for executing a warrant of Sir James Butler, after he was out of the commission of the peace. Per Holt, constable at his peril is to take notice, that his warrant is by one in commission; but all the favour we can do is, since it was a warrant executed a day or two after Sir James was out of commission, that if he has behaved himself honestly and civilly, to be mild to him, and he said, the constable ought to shew the justice of peace's commission, though heretofore it was held, common reputation would be enough; and here the constable coming out of his own parish to execute the warrant, betrays his officiousness. 12 *Mod.* 347. *Mich.* 11 W. 3. *Normond v. Mills*.

On Tuesday 19th June last, Mr. Ashurst moved in arrest of judgment, after verdict for the king, upon an indictment against a constable for a misdemeanor. The charge in the indictment was, That he, being one of the constables of *St. Martins in the Fields*, and being in the execution of his said office, as head of the nightly watch of the said parish, did wilfully and unlawfully suffer Margaret Prince, being a loose, idle, lewd and disorderly person, taken up by Robert Miller, one of the nightly watch of the same parish, between one and two o'clock in the morning, as a common street-walker, &c. to escape out of his custody, before she could be carried before a justice of the peace, to be dealt with by the justice according to law.

The whole indictment was (in substance) thus—That one Robert Miller, being lawfully appointed one of the nightly watchmen of and for the said parish, and being in his office and place as such, performing his duty of a watchman there, at an unreasonable time, i. e. between one and two in the morning, did apprehend and take into his custody one Margaret Prince, then and there BEING a loose, idle, lewd and disorderly person, and a common street-walker, and being then and there behaving herself riotously, and walking the streets there to pick up men, in breach of his majesty's peace; and did then and there take, lead and convey the said Margaret Prince in his custody, to a certain prison called the watch-house in the said parish, and did there deliver her in custody unto one John Bootie, who then and there was one of the constables of the said parish, and then and there being in the execution of his said office of such constable as the head of the nightly watch of the said parish; and did then and there leave and deliver up her the said Margaret Prince in charge with the said John Bootie, so being such constable as aforesaid, and in the execution of his said office as aforesaid; and did then and there CHARGE and REQUEST the said John Bootie so being such constable as aforesaid, to keep and detain the said Margaret Prince so BEING such loose, idle, lewd and disorderly person.

Indictment lies against a constable for a misdemeanor in wilfully suffering a loose, idle, lewd and disorderly woman, taken up by one of the nightly watch as a common street walker, and delivered to him for safe custody, to escape out of his custody, before she could be carried before a magistrate. 2 *Bur.* 866, 867. *Trin.* 32 & 33 *Geo.* 2. *Rex v. Bootie*.

person, and a common street-walker walking the streets, there to pick up men as aforesaid, IN HIS CUSTODY, UNTIL the said *Margaret Prince* could be carried and conveyed into custody before some one of his majesty's justices assigned to keep the peace in and for the said city and liberty, there to be dealt with by such justice according to law for her said offence and breach of the king's peace: Nevertheless, the defendant so being, &c. not regarding the duty of his office, &c. *unlawfully and wilfully discharged* her out or his custody, before that she had been carried before any justice, &c. and *would not keep or detain* her in his custody for the purpose aforesaid, but *wilfully suffered and permitted her to escape and go at large, &c.*

Upon which indictment the defendant having been tried, and a verdict found against him; Mr. *Asburs* prayed a rule to shew cause why the judgment should not be arrested upon the following objection:—That it is not charged that the defendant KNEW that she was a street-walker, &c. as this indictment describes her to be: Nor indeed is it positively charged “that she *was* one.” And if she was *not liable* to be detained by him, he would have subjected himself to an action for false imprisonment, *if he had detained her*. It ought to have *expressly* charged “that she *was* so;” and that “she was delivered to him *as such*.”

Mr. *Norton* and Mr. *Stow* now shewed cause against arresting the judgment. They insisted that the expressions “BEING” and “SO BEING” are sufficient allegations “that she *was* so; and that she was delivered to the defendant *as such*.” And as this is *after verdict*, it must be taken to have been proved at the trial. It is almost impossible that he could be ignorant of it: and if he really was so, he might have pleaded it.

Mr. *Asburs* and Mr. *Norton*, *contra*—The being *after verdict* is no answer, in a *criminal* case; whatever it may be in a *civil* one. *Indictments* must be positive and certain, on the face of them. But this indictment does not sufficiently shew that she was lawfully in the custody of the constable. 1 *Hale's Hist. P. C.* defines what is lawful custody. This is *no positive* allegation “that she was delivered to him *as* a loose, idle and disorderly person.” She might, in fact, be a loose, idle and disorderly woman, &c. and yet not delivered to him *AS SUCH*. It was at *his peril* to detain her, unless he was well satisfied that she was *liable* to be detained. 1 *Salk.* 272. *Dominus Rex v. Fell* is in point, That the defendant is not liable for the escape of a person not committed to his custody *as charged* with a crime.

Mr. *Norton* in reply to the cases cited, insisted that the term “BEING” is a sufficient *averment* of the fact.

Lord *Mansfield* and Mr. Just. *Denison* did not come into court till towards the end of the motion: they therefore remained silent.

Mr. Justice FOSTER—*Fell's* case was *treason*: It was an indictment against him, as keeper of *Newgate*, for negligently suffering the escape of a person, being in his custody, charged with high treason. But would not that have been sufficient ground to have indicted him for a *misdemeanour*?

*hour?* And the present case is a misdemeanour, and sufficiently charged upon the defendant. The peace of this city can never be preserved unless watchmen are supported in doing their duty.

Mr. Justice *Wilmot*——I think it is a misdemeanour in the constable to discharge an offender brought to the watch-house by a watchman in the night; though *without* any positive charge. But, in the present case, I think that this is a *sufficient allegation* of the *fact* of her being such a person, and of her being delivered to the defendant *as* such a person as she is described to be. *Per Cur.* The RULE “to shew cause why the judgment should not be arrested,” was DISCHARGED.

*For other matters, see Arrest, Commitment, County-rate, Justices of Peace.*

## Conviction.

THE power of a justice of the peace is in restraint of the common law, and in abundance of instances is a tacit repeal of that famous clause in the great charter, that a man shall be tried by his equals; which also was the common law of the land long before the great charter, even for time immemorial, beyond the date of histories and records. Therefore generally nothing shall be presumed in favour of the office of a justice of the peace; but the intendment will be against it. Therefore where a special power is given to a justice of the peace by act of parliament to convict an offender in a summary manner, without a trial by jury, it must appear that he hath strictly pursued that power; otherwise the common law will break in upon him, and level all his proceedings. Therefore where a trial by jury is dispensed withal, yet he must proceed nevertheless according to the course of the common law in trials by juries, and consider himself only as constituted in the place both of judge and jury. Therefore there must be an information or charge against a person; then he must be summoned or have notice of such charge, and have an opportunity to make his defence; and the evidence against him must be such as the common law approves of, unless the statute specially directeth otherwise; then, if the person is found guilty, there must be a conviction, judgment and execution, all according to the course of the common law, directed and influenced by the special authority given by the statute; and in the conclusion, there must be a *record* of the whole proceedings, wherein the justice must set forth the particular manner and circumstances, so as if he shall be called to account for the same by a superior court, it may appear that he hath conformed to the law, and not exceeded the bounds prescribed to his jurisdiction. 1 *Burn's Just.* 364.

Proceedings upon convictions must be in the present tense. 1 Stran.

628. Mich. 11

In conviction for keeping an alehouse not necessary to shew he was not punished under the former act.

1 Stran. 555.

Trin. 9 Geo. 1.

Rex v. Ford.

An excuse under a proviso need not be taken notice of in a conviction.

2 Stran. 1101.

Mich. 12 Geo.

2. Rex v.

Bryan.

Summons

must precede

a conviction.

1 Stran. 630.

Trin. 11 Geo.

1. Rex v.

Venables.

Appearance

cures defects

in summons.

Hil. 6 Geo. 1.

Rex v. John-

ton.

Conviction for profane swearing quashed, being *præstitit sacramentum*, in the preterperfect tense. It was held good in substance, being for swearing 150 oaths in *his verbis*, *videlicet*, By G—; and cursing 150 curses in *his verbis*, *videlicet*, G— *damn you*; without repeating each 150 times.

Geo. 1. Rex v. Roberts,

Conviction on 3 *Car.* 1. c. 3. for keeping an alehouse without licence: and *Fortescue* objected, that in the act there is a proviso to exempt persons who have been punished by the former law of 5 & 6 *E.* 6. c. 25. and therefore it should have been said he had not been proceeded against upon that act. *Sed per curiam*; That coming in by way of proviso, he should have insisted on it in his defence; it appears he was asked what he had to say, and therefore we may reasonably presume he had no such defence to make.

The conviction was confirmed.

The defendant was convicted on the gin act, and an exception was taken that there was no averment, that it was not sold to be used in medicine: and the cases on the game act were mentioned, where in conviction it not necessary to exclude all the qualifications for killing game. *Strange contra* insisted, that the reason of that was because those were in the enacting clause; whereas this about medicine comes in by way of proviso, and is by way of defence to be shewn on the defendant's part. And for that purpose he cited *Mich.* 11 *Geo.* 1. *Rex v. Theed*; where in a conviction for obstructing an excise-officer on 8 *Ann.* c. 9. it was objected, That it not being averred to be in the day, it should have been shewn that there was a constable present, which is made necessary in the night; but held well, and its being in the night, should have been shewn on defendant's part. *Et per Curiam*; This is brought within the general enacting clause: and the true distinction is, where the extenuation comes in by way of proviso, or exception. The conviction was confirmed.

There was an order for suppressing an alehouse; and after that a second order, reciting that he had since continued to sell ale, and therefore committing him for three days, and till he find sureties not to sell without licence. It was moved to quash the last order for want of shewing a summons or appearance of the defendant; and *Salk.* 181. and the case of *The Queen v. Green*, 12 *Ann.* were cited. *Sed per Curiam*; We will not presume they acted unlawfully: a summons is certainly necessary, and the justice is punishable if he proceeds without: you never shew notice to the parish that is to be charged in orders of removal. The order was confirmed.

Conviction on 5 *Ann.* cap. 14. for keeping a gun not being qualified; and exception was taken by *Fazakerley*, that here was not a reasonable summons; for it was made on 5 *October*, to appear the same day, which might be impossible upon account of distance, or the summons being served late, and his witnesses might not be got together on so short a warning: then it is to appear *apud paroch' prædict'*; whereas there are two parishes mentioned before; so the man may have gone to one, whilst they were convicting him at the other. *Salk.* 181. *Wearg contra*. The defendant appeared at the time and made defence; so that cures all defects in

## Conviction.

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the summons. *Et per Curiam*; The answer is right. Then it was objected, that the statute requires the conviction to be by the justices of the county where the offence was committed, and that does not appear in this case. *Et per Curiam*; That must appear, or else they have no jurisdiction. *Et per Wearg*, It does; for they distribute part of the penalty to the poor of the parish of *Chelfield*, in com' *Kanc'*, *infra quam paroch' offensum præd' commissum fuit*. And the justices are of the county of *Kent*, and stile themselves so. *Adjournatur*. *Mich. 7 Geo.* it was quashed; for *per Curiam*, their jurisdiction must appear otherwise than out of their own mouth.

This was a conviction that stood in the crown-paper; and was as follows: Borough of *Derby*, to wit. Be it remembered, that on, &c. at, &c. *Thomas Eaton* of the said borough, hosier and wool-comber, cometh before Us *Joseph Bingham* Esquire, mayor of the said borough, and *John Smith* gentleman, two of his majesty's justices of the peace of and for the said borough, and upon his oath *deposed* before us, That *Joseph Vipont*, *Henry Greateorex*, *John Hall*, *Edward Chapman*, and *Thomas Allen*, journeymen wool-combers, who for some months next before their leaving his service as herein after is mentioned, were employed by the said *Thomas Eaton* in the wool-combing business, to work for him at reasonable wages, *bad*, each for himself, at the said borough, confessed to him, "That they had, in the month of *November* last past, at the said borough, agreed one amongst another, and with other journeymen wool-combers, to raise and advance their wages, and that they would not work with him or any other master in the wool-combing business, unless he and they would advance their wages:" and that the said *Thomas Eaton* thereupon refused so to do; and thereupon all his said journeymen refused to work for him at their former reasonable wages, and had left his service. Whereupon the said *Joseph Vipont*, *Henry Greateorex*, *John Hall*, *Edward Chapman*, and *Thomas Allen*, appearing before Us to answer the said charge; and having heard the said charge; and, in the presence of the said *Thomas Eaton*, being called upon by Us to shew cause why they should not be convicted for unlawfully entering into such combination as aforesaid, contrary to the statute in that case made and provided; and having nothing to say, nor being able to make out any thing whereby to defend themselves before Us touching and concerning the premises aforesaid; thereupon the aforesaid *Joseph Vipont*, *Henry Greateorex*, *John Hall*, *Edward Chapman*, and *Thomas Allen*, the day and year aforesaid, by the oath of the said *Thomas Eaton*, a credible witness, are convicted before Us for unlawfully entering into such combination as aforesaid, at the said borough of *Derby*, to raise and advance their wages in the wool-combing business there, contrary to the acts of parliament in that case made and provided. Given under our hands and seals, &c.

This was a conviction on the act of 12 Geo. 1. c. 34. "to prevent unlawful combinations of workmen employed in the woollen manufactures," and for better payment of their wages. Mr. Serjeant *Davy*, on behalf of the defendants, objected to it; 1st, That no evidence is stated

In a conviction the evidence must be set out; and there must be an adjudication of the forfeiture.  
2 Bur. Rep. 1163 East.  
1 Geo. 3.  
Rex v. Vipont and others.

to have been *given in the presence of the defendants*; only, the charge was read *to them*, in the presence of the prosecutor *Thomas Eaton*, the witnesses; but it was not made out and proved by him *viva voce* before them, though they *personally appeared*; and consequently had a right of *cross-examining* the witnesses, upon their giving verbal evidence face to face: nor is indeed any evidence at all *set out* with sufficient particularity and preciseness. 2d objection. This *fact*, as charged, is not an *offence within* the statute. These people were all of them *journeymen to the same master* at home; and *not* persons assembled and formed into unlawful clubs or unlawful societies; which he would have it understood that the statute required: and there was *no* written agreement, no resolution “not to work with him or any *other* master for such wages.” 3d objection. Here is *no judgment*: It is only said “That they are *convicted* for unlawfully entering in—” to such combination.” It ought to proceed, “*quod forisfaciat*,” and expressly adjudge *the forfeiture*. So is *2 Strange* 858. 3 *Geo. 2. in Rex v. Hawks*; where a conviction for killing a deer was quashed, because it was only “*convictus est*,” without any judgment “*quod forisfaciat*.” They ought to have awarded the particular punishment; as the act does not fix the duration of the punishment, but leaves the time of the imprisonment quite discretionary, “for any time not exceeding three months.” Therefore this case differs widely from cases where the punishment is *ascertained*, and *necessarily flows* from the conviction. The court over-ruled the second objection, as a frivolous one, and not to be seriously supported.

Mr. *Caldecot*, *contra*, for the plaintiff, applied himself to answer the first and third objections. 1st, It sufficiently appears on the face of the conviction, that the defendants heard the evidence. However, it is *not necessary* that the evidence should be *given in the presence of the defendants*; for which he cited *Rex v. Baker*, 2 *Strange* 1240. in point, as he said, *for him*; but quite otherwise as the serjeant alledged, and as the court also explained it; and he observed that *this* conviction is as much in the *present* tense, as that was: the words of it are, “They are convicted.” As to the third objection—The justices have nothing to do but to *convict*: *that* is the judgment. Then *after* the conviction, the justices exercise their discretion: which they *did* here by committing them for three months.

Mr. Serjeant *Davy*, in reply — 1st, The case of *Rex v. Baker* proves directly contrary to what Mr. *Caldecot* has applied it. For there, the court took it to *be* a hearing in the presence of the defendants: they there supposed the whole to pass at the very *same* time. Here, it is manifest that they were *not* present at the time when *Thomas Eaton* gave his evidence.

Lord *Mansfield* stopt him; it being unnecessary to say any more about enforcing the objections, since the first and third were fatal. 1st, The evidence ought to be taken over again, in a *defendant's presence*, unless he confesses. Now here they do not confess before the justices: and the evidence only is, “That they had formerly confessed this combination to “the *witness*.” And in the case of *Rex v. Baker*, The court went upon the supposition, “That the defendant was *present* when the evidence was

“given, and did *actually bear it given.*” In a conviction the evidence must be *set out*, that the court may judge of it; and it must be *given in the presence of the defendant*, that he may have an opportunity of *cross-examining*. 3d objection—Here the punishment is *discretionary* as to the *length* of the time of imprisonment: and here is *no judgment* at all; only a conviction. They ought to have gone on, and adjudged the forfeiture. Therefore on both these objections, this conviction ought to be quashed: for however useful a statute this may be for the benefit of trade, yet the justices must convict according to law.

Mr. Just. *Denison* concurred in both points. 1st, The evidence must be given in the *presence* of the defendant, that he may have an opportunity to cross-examine. In the case of *Rex v. Baker*, nothing wrong appeared upon the *face* of the conviction; and therefore the court supposed and took it to have been *rightly* transacted. As to the third objection—The time, the duration of the commitment ought to be *ascertained* upon the conviction. The statute does not fix it; it only says “for any time *not exceeding three months.*”

Mr. Justice *Wilmot* concurred in both. 1st, The witnesses ought to be examined *in the presence* of the party accused, that he may have the benefit of *cross-examination*. And here it appears plainly enough, that *Eaton* the Witness against these Defendants was not *so* examined in their presence. As to the third objection—A conviction was equal to a *verdict* and *judgment*. But this is a verdict without a judgment. In the case of *Rex v. Hawkes*, *H. 3 Geo. 2. B. R.* it was settled, “That there *must* be a judgment of forfeiture.” I have a full note of that case: It was a conviction for deer-stealing, on 3, 4 *W & M. c. 10.* And there, though the penalty was *certain* (a forfeiture of 20 *l.* for every offence in mere hunting; and if a deer be killed, wounded or taken, then 30 *l.*) and though the act of parliament distributes the forfeiture, yet it was holden “That there must be a judgment to levy it:” For every execution must be *founded* on a judgment. The cases of *Regina v. Wingrave*, *H. 2 Ann. B. R.* and *Regina v. Serle* in *B. R.* were there both quoted by Mr. *Fazakerley* in support of the exception. There was a case in *Tr. 9 Geo. 1. B. R. Rex v. Ashton*, upon a conviction for destroying fruit-trees, contrary to 1 *G. 1. c. 48.* The words of the conviction were, “*Igitur consideratum est per nos, quod convictus est.*” The court held “That there ought to be a *judgment quod forisfaciat, or quod committatur, &c.*” But *this* is a much stronger case; because here there is a *discretion* to commit either to the *house of correction*, there to remain and be kept to hard labour for any time *not exceeding three months*; or to the *common gaol of the county, &c. as they shall see cause*; there to remain without bail or mainprize, for any time *not exceeding three months.* *Per Cur.* unanimously and clearly, the conviction must be quashed.



## Coopers.

STAT. 8 Eliz. c. 9. [A. D. 1565. Intituled] "An act to repeal a branch of the statute made in the twenty-third year of king *Henry* the Eighth, touching the prices of barrels and kilderkins."

So much of the statute of 23 H. 8. c. 4. as concerneth the prices of vessels for ale and beer, repealed, &c.

"In their most humble wise shewen unto the queen's most excellent majesty, and unto the lords spiritual and temporal, and unto the commons in this present parliament assembled, the coopers of the city of *London*, and of all other cities and towns within this realm of *England*, That where in the parliament holden by prorogation at *Westminster* the fifteenth day of *January* in three and twentieth year of the reign of the king of famous memory, king *Henry* the Eighth, father to our said sovereign lady the queen's highness that now is, there was one statute made and enacted, intituled, *An act that no brewers of beer or ale, shall make their barrels, kilderkins nor firkins within them; and how much the same barrels, kilderkins and firkins shall contain:* (2) In which statute, amongst other things therein contained, it is enacted, That no artificer of the coopers shall inhanche the prices of any such barrels, kilderkins, firkins or other vessels, in the sale of them to any ale-brewer or beer-brewer, or other person, as in the said act are mentioned, but should keep the rates of such prices as in the same act are expressed, and not above; (3) upon pain to forfeit for every barrel, kilderkin and firkin defective or inhaunched in price, in any point contrary to the said act, three shillings and four pence: (That is to say) for every beer-barrel, nine pence; for every beer-kilderkin, five pence; for every beer-firkin, three pence: And the ale-barrel, sixteen pence; the ale-kilderkin, ninepence; and the ale-firkin, fivepence; as by the same act amongst divers other things therein contained, more fully and at large doth and may appear: (4) Since which time the clove-board, and stuff whereof the said vessels and the hoops thereof should be made, are risen and grown to such excessive prices, that such as do make the said vessels, cannot make and sell any such barrels, kilderkins, firkins, or other vessels, at the prices expressed in the said statute, but to their great loss and hinderance, whereby the mystery, trade and faculty of the said coopers is utterly overthrown, to the impoverishment and utter undoing of them, their wives, children and families, as is most evident:

The difference between the old and new prices of barrel-boards and hoops.

See 7. 2. "Forasmuch as at the time of the making of the said statute, the coopers might have bought a thousand of barrel-boards for twelve shillings, or thirteen shillings and four-pence; and a thousand of kilderkin-boards for nine shillings or ten shillings, and a load of hoops for nine shillings or ten shillings; and now a thousand of barrel-boards cannot be bought under three and thirty shillings and four pence, and forty shillings; and a thousand of kilderkin-boards under six and twenty shillings and eight

eight pence, and a load of hoops under three and thirty shillings and four pence, and forty shillings, as is right-well and notoriously known.

*Sect. 3.* "Be it therefore enacted by the queen's most excellent majesty, the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That as much of every article, clause and sentence comprized in the said estatute, made in the said three and twentieth year of the reign of the said late king, as doth touch and concern the prices of barrels, kilderkins, firkins and other vessels, and all and every pain and forfeiture expressed and declared in the said act, for selling of any of the said kind of vessels above the prices before specified, from the time of new prices to be set in form hereafter expressed, for such places only as the same new prices shall be set, shall be clearly repealed, frustrate, and made void.

A repeal of so much of the statute of 23 H. 8. c. 4. as toucheth the prices of vessels for ale and beer.

*Sect. 4.* "And that from henceforth the prices of all barrels, kilderkins, firkins, and other vessels to be sold, for ale, beer, or soap to be uttered therein, shall be rated and taxed by mayors, bailiffs, and other head officer or officers of every city and town corporate, where any such vessels shall be made, or offered to be sold.

Who shall rate the Prices of vessels for ale and beer.

*Sect. 5.* "And where such vessels shall be made or sold out of any city, borough or town corporate, the prices thereof shall be rated and taxed by the justices of the peace, or the more part of them, being present in the general quarter-sessions, yearly next after *Easter*, at such reasonable prices as they shall think reasonable by their discretions; the said estatute made in the said three and twentieth year of the reign of the said late king *Henry* the Eighth, or any other law, custom or usage to the contrary thereof in any wise notwithstanding.

*Sect. 16.* "And be it further enacted, That if the said coopers, or any of them, shall not make sale according to such prices as shall be rated, as is aforesaid, after proclamation thereof made, that then every person and persons so offending, shall for the same incur the pains and forfeitures mentioned in the said estatute made the said three and twentieth year of the reign of the said late king; that is, to wit, for every barrel, kilderkin and firkin which shall be sold at greater price than shall be rated and taxed, as is aforesaid, the sum of three shillings and four pence, of lawful money of *England*, whereof the one moiety to be to the queen's highness, her heirs and successors, and the other moiety to such person or persons as will sue for the same by action of debt in any court of record, wherein no protection, essoin or wager of law shall be allowed or admitted.

The forfeiture of coopers not selling their vessels at the prices rated.

By the Stat. 12 Car. 2. c. 24. *sect.* 34. and 1 Will. 3. c. 24. *sect.* 5. Every barrel of beer, within the bills of mortality, shall be thirty-six gallons, and the barrel of Ale thirty-two gallons; and in all other places, thirty-four gallons shall be reckoned for a barrel of beer or ale.

## Corn.

STAT. 43 *Eliz. c. 7.* [*A. D. 1601. Intituled*] “An act to avoid and prevent divers misdemeanours in lewd and idle persons.”

Punishment  
for cutting of  
corn growing,  
or of such  
other small  
offences; and  
of a constable  
refusing to  
punish such  
an offender,  
being com-  
manded.  
1 Salk. 181.  
This enforced  
by 15 Ca. 2.  
c. 2. f. 2.

“Forasmuch as unlawful cutting or taking away of corn and grain growing, robbing of orchards and gardens, digging up or taking away fruit-trees, breaking of hedges, pales, or other fences, cutting or spoiling of woods or under-woods standing and growing, and such like offences, are now more commonly committed by lewd and mean persons than in former times; and that the said offences are great causes of the maintaining of idleness, and the persons which commit the same, are not for the most part able, nor have wherewith to make recompence or satisfaction; (2) Be it therefore enacted by the authority of this present parliament, That all and every such lewd person and persons, which from and after the last day of *February* now next following shall cut, or unlawfully take away any corn or grain growing, or rob any orchards or gardens, or break or cut any hedge, pales, rails or fence, or dig, or pull up, or take up any fruit-tree or trees in any orchard, garden, or elsewhere, to the intent to take and carry the same away, or shall cut or spoil any woods or under-woods, poles or trees standing, not being felony by the laws of this realm; (3) and their procurer and procurers, receiver or receivers knowing the same; (4) being thereof lawfully convicted by the confession of the party, or by the testimony of one sufficient witness, upon oath before some one justice of peace, mayor, bailiff, or other head officers (of the county, city or town corporate; (5) which said justice or other head officer shall have power by force of this statute, to minister the said oath where the offence shall be committed, or the party offending apprehended) (6) shall give the party and parties such recompence and satisfaction for his and their damages, and within such time, as by any one such justice of peace of the said county where such offence shall be done, without the liberty of any city or town corporate, or by such head officer or justice of peace within any city or town corporate, shall be ordered and appointed, and the same to be only for the first fault: (7) And if such offender or offenders shall be thought in the discretion of the said justice or justices, or other head officers, not able or sufficient, or do not make recompence or satisfaction for the said damages, in manner and form afore said; then the said justice or head officer shall commit all and every the said offender or offenders to some constable or constables, or other inferior officers of the city, borough, town or hamlet where the offence shall be committed, or the party apprehended, to be whipped; (8) and for every such offence, for, or of which the offender or offenders shall be afterwards committed in form afore-limited, the person and persons so offending, to receive the said punishment of whipping.

*Sett.* 2. " And be it enacted by the authority aforesaid, That if any constable or inferior officer do refuse, or do not at the Commandment of any justice of peace, or other head officer, execute by himself, or some other to be by him appointed, upon the offender, the punishment limited by this statute, That in that case it shall and may be lawful for the said justice of peace to commit the constable or other inferior officer so refusing, or not executing the said punishment by himself, or some other, to the common gaol of the said county, city, or town corporate, there to remain without bail or mainprize, until the said offender or offenders be by the said constable or constables so refusing, or not executing, or some other by his or their procurement, punished and whipped, as is above-limited and declared.

The punishment of a constable refusing to punish an offender.

*Sett.* 3. " Provided always, That no justice of peace, or other head officer, do execute this statute for any the offences aforesaid done unto himself, unless he be associated and assisted with one or more other justices of peace whom the offence doth not concern.

None shall punish an offence done unto himself.

*Stat.* 22 *Car.* 2. c. 8. [*A. D.* 1670. *Intituled*] " An act for ascertaining the measures of corn and salt."

" Whereas there is a great variety of bushels and other measures of different contents and gages used in several counties, cities, boroughs, ports and other places of this realm, for the measuring, buying and selling of all sorts of grain, salt, and other commodities usually bought and sold by the bushel, to the great defrauding and oppressing of the people, contrary to the Great charter, and sundry of the good laws formerly made and enacted, That there shall be but one measure to be used throughout all the realm :

Enforced by 8 Annæ, c. 13. sect. 12. 9 H. 3 Stat. 1. c. 25. 14 Ed. 3. Stat. 1. c. 12. 27 Ed 3 Stat. 2. c. 10.

*Sett.* 2. " For future redress whereof, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, That this ensuing clause contained in a statute made in the sixteenth year of king *Charles* the First, intituled, *An act for the better ordering and regulating of the office of clerk of the market, allowed and confirmed by this statute, and for the reformation of false weights and measures,* (by way of proviso, viz.) That such measure as is commonly called water-measure, in any ports, maritime towns, or other places, shall be still used and continued as formerly the same hath been (any thing in this statute contained to the contrary hereof in any wise notwithstanding) shall, from and after the nine and twentieth day of *September* one thousand six hundred and seventy, be and stand nulled and repealed, as to the measuring, selling or buying of any sort of corn or grain ground or unground, or salt within the kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*; (2) And that if any person or persons, after the time aforesaid, shall sell any sort of corn or grain, ground or unground, or any kind of salt, usually sold by the bushel, either in open market, or any other place, by any other bushel or measure, than that which is agree-

16 Car. 1. c. 10. A clause thereof in repealed.

Winchester  
measure only  
to be used.

Forfeiture for  
offending a-  
gainst this act.

Penalty en-  
larged by 22 &  
23 Car. 2. c. 12.

The penalty  
of mayors and  
all other offi-  
cers permit-  
ting the use of  
any other  
measure.

Clerk of the  
market, &c.  
refusing to seal  
or mark any  
measure, his  
Forfeiture.

Exacting fees,  
how punish-  
able.

able to the standard marked in his majesty's exchequer, commonly called the *Winchester* measure, containing eight gallons to the bushel, and no more or less, and the said bushel stricken even by the wood or brim of the same by the seller, and sealed, as this act directs, he or they shall forfeit for every such offence the sum of forty shillings; (3) to be levied in such manner, and such other penalties for want of distress to be inflicted, as in and by the said former act is directed, by the warrant or order of any one or more of his majesty's justices of the peace within the county, city or place where such offence shall be committed; which said justices respectively are hereby required and enabled to see this statute duly executed.

*Secl. 3.* " And be it likewise further enacted by authority aforesaid, That if any mayor, or other head officer of any city, borough or corporation, or liberty within this kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, shall knowingly and wilfully permit or suffer any person or persons within their respective limits or jurisdictions, to sell or buy any sort of corn or grain, ground or unground, or salt, by any other bushel or measure, or stricken in any other manner than is hereby prescribed; (2) or shall suffer within their respective limits or jurisdictions any other measure to be used, than is of the contents aforesaid, and sealed as this act directs; (3) or if upon complaint of the breach of this statute, he or they shall not duly punish and reform the same according to the purport thereof; (4) Then he or they so offending, for every such offence upon due proof and conviction thereof by presentment or indictment before the justices of the peace of the county where such offence shall be committed, at the general sessions of the peace held for the same, shall forfeit the sum of five pounds; (5) the one moiety thereof to the informer or prosecutor, the other moiety to the use of the poor of the parish where such offence shall be committed, to be levied by distress and sale of the offender's goods and chattels; and for default of such distress, by imprisonment of the person or persons so offending, till payment thereof made by warrant of the said justices.

*Secl. 4.* " And be it further enacted, That if the clerk of the market of his majesty's house within the verge, or the mayor, or other head officer, lord of the liberty, or other person authorized by the laws of the realm, to mark or seal measures within their respective jurisdictions, shall neglect or refuse, being required, to seal or mark any bushel, half bushel or peck duly gaged, as is hereby before directed and appointed, shall forfeit for the first offence five pounds, and for every other offence ten pounds, to be levied, as aforesaid; (2) or if the clerk of the market of his majesty's house within the verge, shall take more than the lawful and accustomed fees; or if any other person or persons shall exact or take from any person more than one penny for the sealing and marking of a bushel, or more than one half-penny for the sealing or marking of a half bushel or peck, or more than one farthing for the sealing or marking of any measure containing one gallon, pottle, quart, pint or half-pint, he or they shall for every such offence, upon due proof and conviction there-  
of,

of, incur the penalties mentioned and contained in the afore-named statute for the said offence, made in the sixteenth year of king *Charles* the First. 16 Car. 1. c. 19.

*Seft. 5.* “ And to the end that there may be a just and certain measure (to determine all controversies) gaged, as this act directs, (2) Be it further enacted, That at the charge of such person or persons respectively, who shall have the toll or profit of the market, where toll is not taken, within any city, corporation or market-town within this realm in their respective jurisdictions, there shall be before the said nine and twentieth day of *September*, one measure of brass provided, and chained in the publick market-place; (3) upon pain to forfeit and lose, for every person so neglecting respectively, the sum of five pounds, to be recovered and levied as is by this act directed; one moiety to the poor of the parish where such offence shall be committed; the other moiety to him or them that shall sue for the same. A measure of brass to be chained in every publick market place.

*Seft. 6.* “ And be it further enacted by the authority aforesaid, That all and every constable or constables within this realm of *England*, in their respective precincts, are hereby impowered and required to search and examine if any person or persons use any other measure than according to the proportions aforesaid, or shall strike the same in any other manner than this act directs, or sell or buy by a measure unsealed: (2) And in case he or they shall find any such unsealed measure, to seize and break the same; and for that and every other offence against this act, shall present such offender at the next private or quarterly sessions to be held for such county or place where such offence shall be committed. Constables to search if any persons use other measures.

*Seft. 7.* “ Provided always, and be it enacted, That no person or persons punished for any offence by virtue of this act, shall be again questioned or punished for the same offence, by virtue or colour of any other act. Once punished.

*Seft. 8.* “ Provided always, and be it further enacted and declared, That no person or persons whatsoever shall take any toll, or any thing in lieu thereof, but respectively according to such proportion as the measures in this act limited and appointed bear unto the measures whereby the same have been heretofore usually taken; any law, custom or usage, to the contrary notwithstanding.” Toll.

**Stat. 22 & 23 Car. 2. c. 12.** [*A. D. 1670. Intituled*] “ An additional act for ascertaining the measures of corn and salt.” Enforced by 8 Ann. c. 18. s. 12.

“ Whereas notwithstanding there hath been great care taken in a late act, intituled, *An act for ascertaining the measures of corn and salt, throughout the realm*; yet the same is in a great measure avoided, by selling in private places, as well as in publick markets, by the bag, or without measuring, by the buyers shaking of the bushel before it be struck; so that those places who have given obedience to the said act, are greatly prejudiced, and their markets likely to be lost by such undue practices: 22 Car. 2. c. 8.

No corn or  
salt shall be  
bought by the  
bag, without  
measuring.  
Forfeiture.

*Señ. 2.* “ For prevention whereof, Be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, That every person or persons, who shall from and after the five and twentieth day of *March* next sell or buy any corn ground or unground, or salt by the bag, or without measuring, being thereunto required, or in any other manner than is by the said act directed, and that without shaking the said bushel or measure by the buyer, shall forfeit and lose, beside the penalty of the former act appointed, all corn, grain or salt, bought or sold contrary to this act, or the value thereof, to the person or persons complaining.

The proof to  
lie upon the  
defendant,  
when he  
bought the  
corn.  
Forfeiture ;

how to be  
disposed of.

*Señ. 3.* “ And whereas a great cause of the mischief hereby intended to be prevented, doth arise by the selling in private places, and so voiding, not only the intention of the said act, but to the great damage of public markets ; (2) Be it further enacted, That upon complaint made to any one or more justices of the peace, That any kind of corn, ground or unground, or salt, hath been sold or bought, or delivered contrary to this act, the proof shall lie upon the defendant, to make it appear by the oaths of one or more credible witnesses, That he or they did sell or buy the same in every respect, according to this and the said former act ; wherein, if such person complained of shall fail, he or they shall forfeit and lose as is by this act before directed, to be levied by distress and sale of his or their goods or chattels, restoring the overplus by warrant under the hand and seal of one or more justice, before whom he or they shall be so convicted : which penalties by this act appointed to be levied, shall by the said justice or justices be distributed, one half to the poor of the parish where such offence was committed, and the other half to the informer or prosecutor.

Where there  
is no clerk of  
the market,  
then what per-  
sons are ap-  
pointed to seal  
the measures.

*Sect. 4.* “ And whereas in all places where markets are holden, there is not a clerk of the market to seal all measures, as by the former act is directed : Be it therefore further enacted, That in every such case it shall and may be lawful for the mayor, bailiffs, or head officer, or other person or persons who hath the benefit of such market ; and they and every of them, are hereby authorized and required to seal, or cause to be sealed, all measures duly gauged, that shall be brought unto them for that purpose ; which sealing shall be as effectual in the law to all intents and purposes, as if such measure had been sealed by any clerk of the market ; every such mayor, bailiff, or head officer, taking no more for so doing than is by the said act appointed.

This act shall  
not extend to  
rent corn or  
tithe corn.

*Señ. 5.* “ Provided always, and be it further enacted by the authority aforesaid, That it shall and may be lawful for every person or persons, bodies politic or corporate, or any of them to whom any salt, rent-corn, or tithe-corn is reserved, or due by any lease, grant, contract, custom or usage, to receive and take all such rent, or other duties of salt and corn, as is or shall be so reserved, or due, or the just and full value thereof in ready money, according to the proportion and quantity, and by the like measures, and in such manner, as the same were due and paid before the beginning

beginning of this parliament; any thing herein, or in any other law or statute, to the contrary in any wise notwithstanding."

Stat. 5 Geo. 2. c. 12. [A. D. 1732. Intituled] "An act for amending and making more effectual an act made in the first year of the reign of king James the Second, intituled, *An additional act for the improvement of Tillage.*"

"Whereas by an act made in the first year of the reign of his majesty 1 Jac 1 c. 12, king James the Second, intituled, *An additional act for the improvement of tillage*, provision was made for examining and determining the common market prices of midling *English* corn and grain, which nevertheless hath been found ineffectual; therefore for the better ascertaining the common market prices of midling *English* corn and grain, and for preventing the fraudulent importation of foreign corn and grain, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of June one thousand seven hundred and thirty-two, it shall and may be lawful to and for all and every the justices of peace, for the several and respective counties, within that part of *Great Britain* called *England, Wales*, and the town of *Berwick upon Tweed*, wherein foreign corn or grain shall or may be hereafter imported, and they are hereby enjoined and required, at every their quarter-sessions, to give in charge in open court to the grand jury there assembled, to make enquiry and presentment upon their oaths, of the common market prices of midling *English* corn and grain, of the respective sorts and quantities mentioned in an act made in the two and twentieth year of the reign of his majesty king Charles the Second, intituled, *An act for improvement of tillage, and breed of cattle*, as the same shall be commonly bought and sold in every such county; which inquiry and presentment the said grand jury are hereby impowered and required to make.

After 1 June 1732, justices at quarter-sessions to charge the grand jury,

who are to presentment the market prices of *English* corn. 22 Car. 2. c. 13.

Sect. 2. "And be it further enacted by the authority aforesaid, That such presentment shall be made in open court, and shall be certified by the said justices in writing to his majesty's chief officer and collector of the customs for the time being, residing in every such port or haven, where such corn and grain shall be imported, and shall be hung up in some publick place in the custom-house belonging to every such port or haven, to be resorted to by all persons for their information.

Presentment to be made in open court, certified to collector of customs, and hung up at the custom houses for publick view.

Sect. 3. "And be it further enacted by the authority aforesaid, That from and after the said first day of June one thousand seven hundred and thirty-two, the custom and duty of foreign corn and grain imported into that part of *Great Britain* called *England, Wales*, and the town of *Berwick upon Tweed*, appointed to be paid by the said act made in the two and twentieth year of the reign of his majesty king Charles the Second, shall be collected and paid according to the prices contained in such respective certificates as aforesaid, and not otherwise; any thing in the said act made

Duties on foreign corn to be paid according to the prices in the certificates.

in



in the first year of the reign of his majesty king *James* the Second to the contrary notwithstanding.

Not to extend  
to London. *Sett.* 4. " Provided always, and be it further enacted by the authority  
1 Jac. 2. c. 19. to extend, to prejudice or affect the authority given by the said act made  
in the first year of the reign of his majesty king *James* the Second, to the  
mayor, aldermen, and justices of the peace of the city of *London*; but  
that the said mayor, aldermen, and justices of the peace may continue to  
exercise the same at the times, and in the manner therein mentioned; any  
thing in this act contained to the contrary notwithstanding.

No warrant,  
&c. to be  
granted for  
transporting  
any foreign  
corn to any  
other English  
haven, after  
importation. *Sett.* 5. " And be it further enacted by the authority aforesaid, That  
from and after the said first day of *June* one thousand seven hundred and  
thirty-two, no warrant, sufferance, coast cocquet, *Transfire*, or let-pass  
whatsoever, shall be granted or allowed for transporting, conveying or  
carrying forth to the open sea in any ship or vessel from any port or ha-  
ven within that part of *Great Britain* called *England*, *Wales*, and the town  
of *Berwick upon Tweed*, to any other port or haven of the same, any fo-  
reign corn or grain after the importation thereof; and that no person or  
persons whatsoever, from and after the said first day of *June* one thousand  
seven hundred and thirty-two, shall directly or indirectly transport, convey,  
or carry forth to the open sea, or cause or procure to be transported, con-  
veyed or carried forth to the open sea, out of or from any port, haven,  
creek or road, or member thereof, within that part of *Great Britain* cal-  
led *England*, *Wales*, and the town of *Berwick upon Tweed*, in order to be  
landed or discharged in any other port or place within the same, or lade,  
or cause or procure to be laden in any ship or vessel, in order to be land-  
ed or discharged in any other port, haven, or place, within the same,

Foreign corn  
so transported  
forfeited, any foreign corn or grain, or any foreign corn or grain mixed with *Eng-  
lish* corn or grain, after the importation thereof, under the penalties and  
forfeitures herein after mentioned, that is to say, That all such corn and  
grain, that shall be transported, conveyed or carried forth into the open  
sea, or laden contrary to this act, shall be forfeited; and that every offen-  
der therein shall forfeit the sum of twenty shillings for every bushel of such  
corn or grain so transported, conveyed or carried forth into the open sea, or  
laden contrary to this act; and moreover the ship or vessel, upon which such  
corn or grain shall be so transported, conveyed, or carried forth into the  
open sea, or laden, and all her guns, tackle, apparel and furniture shall  
be forfeited; the one moiety of all which penalties and forfeitures shall  
be to the king's majesty, his heirs and successors, and the other moiety  
to him or them, who will sue for the same, to be recovered by action of  
debt, bill, plaint or information in any of his majesty's courts of record  
at *Westminster*, wherein no essoin, protection, or wager of law shall be  
allowed; and that the master and mariners of any such ship or vessel,  
wherein any such offence shall be committed, knowing such offence, and  
wittingly and willingly aiding and assisting thereunto, and being thereof  
duly convicted in any such court of record as aforesaid, shall be imprison-  
ed for the space of three months without bail or mainprize.

and 20 s. per  
bushel;

vessel and  
tackle forfei-  
ed.

Three months  
imprisonment  
on assisting in  
such transpor-  
tation,

Stat. 11 Geo. 2. c. 22. [A. D. 1738. Intituled] " An act for punishing such persons as shall do injuries and violences to the persons or properties of his majesty's subjects, with intent to hinder the exportation of corn."

" Whereas many disorderly and evil-minded persons have of late frequently assembled themselves in great numbers, and committed great violences, and done many injuries to the persons and properties of his majesty's subjects, with intent to hinder the exportation of corn, whereby many of his majesty's subjects have been deterred from buying of corn and grain, and following their lawful business therein, to their great loss and damage, as well as the great damage and prejudice of the farmers and landholders of this kingdom, and of the nation in general; for the better preventing such wicked and disorderly practices, and more easily and effectually bringing such offenders to condign punishment, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person or persons shall, from and after the four and twentieth day of *June* one thousand seven hundred and thirty-eight, wilfully and maliciously beat, wound, or use any other violence to or upon any person or persons, with intent to deter or hinder him or them from buying of corn or grain in any market or other place within this kingdom; or shall unlawfully stop or seize upon any waggon, cart or other carriage, or horse, loaded with wheat, flour, meal, malt or other grain, in or on the way to or from any city, market town, or sea port of this kingdom, and wilfully and maliciously break, cut, separate or destroy the same, or any part thereof, or the harness of the horses drawing the same; or shall unlawfully take off, drive away, kill or wound any of such horses, or unlawfully beat or wound the driver or drivers of such waggon, cart or other carriage, or horse, so loaded, in order to stop the same; or shall, by cutting of the sacks, or otherwise, scatter or throw abroad such wheat, flour, meal, malt or other grain, or shall take and carry away, spoil or damage the same, or any part thereof; every and all such person and persons being thereof lawfully convicted before any two or more justices of the peace of the county, shire, stewartry, riding, division, town or place corporate, wherein such offence or offences shall be committed, or before the justices of the peace in open sessions (who are hereby authorized and empowered summarily and finally to hear and determine the same) shall be sent to the common gaol, or to the house of correction, there to continue and be kept to hard labour for any time not exceeding the space of three months, nor less than one month; and shall by the same justices be also ordered to be once publicly and openly whipped by the master or keeper of such gaol, or house of correction, in such city, market town or sea port, in or near to which such offence shall be committed, on the

Preamble.

Persons using violence to hinder the purchase or carriage of corn.

to be imprisoned,

and publicly whipped.

first.

first convenient market day, at the market cross or market place there, between the hours of eleven and two of the clock.

Committing  
the like offen-  
ces a second  
time,

destroying  
granaries or  
the corn  
therein,

or in vessels,  
&c.

Felony.

Provissos.

Satisfaction  
for such da-  
mages reco-  
verable from  
the hundred,

(not exceeding  
100 l.)

as in cases of  
robbery.

*Sez. 2.* " And be it further enacted by the authority aforesaid, That if any such person or persons so convicted shall commit any of the offences aforesaid a second time; or if, from and after the said four and twentieth day of *June* one thousand seven hundred and thirty-eight, any person or persons shall wilfully and maliciously pull, throw down, or otherwise destroy any storehouse or granary, or other place where corn shall be then kept in order to be exported; or shall unlawfully enter any such storehouse, granary or other place, and take and carry away any corn, flour, meal or grain therefrom, or shall throw abroad or spoil the same, or any part thereof; or shall unlawfully enter on board any ship, barge, boat, or vessel, and shall wilfully and maliciously take and carry away, cast, or throw out therefrom, or otherwise spoil or damage, any meal, flour, wheat or grain therein intended for exportation; every person so offending, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be transported for the space of seven years, in like manner as other felons are directed to be transported by the laws and statutes of this realm; and if any such offender so transported shall return to this kingdom before the expiration of the said seven years, he or she shall suffer death as a felon without benefit of clergy.

*Sez. 3.* " Provided always, That no attainder for any offence made felony by virtue of this act shall make or work any corruption of blood, loss of dower, or disinherittance of heir or heirs.

*Sect. 4.* Provided also, That no person, who shall be punished for any offence by virtue of this act, shall be punished for the same offence by virtue of any other law or statute whatsoever.

*Sect. 5.* " And be it further enacted by the authority aforesaid, That from and after the four and twentieth day of *June* one thousand seven hundred and thirty-eight, the inhabitants of every hundred in that part of *Great Britain* called *England*, wherein any such offence as aforesaid shall be committed, shall make full satisfaction and amends to all and every the person and persons, their executors and administrators, for the damages they shall have sustained, or suffered by any injury or violence done to their properties by any offender or offenders against this act; and that every person and persons, who shall sustain damages in their properties by any of the said offences, shall and are hereby enabled to sue for and recover such his or their damages (the sum to be recovered not exceeding one hundred pounds) against the said hundred, who by this act shall be made liable to answer all or any part thereof; such damages to be sued for, levied and raised in such manner and form, and by and under the like methods and directions, as are prescribed and mentioned in cases of actions for robberies on the highway, in and by an act made in the seven and twentieth year of the reign of queen *Elizabeth*, intituled, *An act for the following hue and cry*; and by one other act made in the eighth year of the reign of his present majesty, intituled, *An act for the amend-*

*ment*

ment of the laws relating to the actions on the statute of hue and cry, except so much thereof as relates to giving, leaving, or publishing notice, or making fresh suit and hue and cry, or any other matter otherwise provided for by this act.

*Sec. 6.* " Provided nevertheless, and be it further enacted by the authority aforesaid, That no person or persons shall be enabled to recover any damages by virtue of this act, unless he or they by themselves or by their servants, within two days after such damage or injury done him or them by any such offender or offenders as aforesaid, shall give due notice of such offence done and committed to one of the constables of the hundred, or to the constable, borsholder, headborough or tithingman of the town, parish, village, hamlet or tithing, in or near which such fact shall be committed; and shall within ten days after such notice give in his or their examinations upon oath, or the examination upon oath, of his or their servants being present at the time of the fact being committed, or having the care of such his or their properties, to which such damage or injury shall be done, before any justice of the peace of the county, liberty or division where such fact shall be committed, whether he or they do know the person or persons that committed such fact, or any of them; and if upon such examination it be confessed, that he or they do know the person or persons that committed the said fact, or any of them, that then he or they so confessing shall be bound by recognizance to prosecute such offender or offenders according to this act, or otherwise according to the laws of the realm.

But notice is to be given within 2 days after the fact to a constable; and examination upon oath within 10 days.

*Sec. 7.* " Provided also, and be it enacted by the authority aforesaid, That where any offence shall be committed against this act, and any of the said offenders shall be apprehended and lawfully convicted of such offence within the space of twelve months after the offence committed; no hundred or franchise therein shall in any wise be subject or liable to make any satisfaction to the party or parties injured for the damages he or they shall have sustained; any thing in this act to the contrary notwithstanding.

If any one of the offenders be convicted within twelve months, the hundred released.

*Sec. 8.* " Provided also; That no person, who shall sustain any damage by reason of any offence to be committed by any offender contrary to this act, shall be enabled hereby to sue or bring any action against any hundred where such offence shall be committed, till after the expiration of one year; nor unless the party or parties sustaining such damage, shall commence his, her, or their action or suit within two years next after the offence shall be committed."

Actions not to be brought against hundreds under 1, or after 2 years.

*For other matters, see Badgers, Forestalling.*

## Coroner.

**CORONER**, (*coronator, a corona*) is an ancient officer of this land, (for mention is made of his office in king *Athelstan's* charter to *Beverley*, *an.* 925) and is so called, because he deals wholly for the king and crown. There are four of them commonly in every county, in some fewer, and in some counties but one: they are chosen by the freeholders of the same, by the king's writ, and not made by letters patent. *Crompt. Jurisd.* f. 126. This officer, by the statute of *Westm.* 1. c. 10. ought to be a sufficient person, that is, the most wise and discreet knight that best would and might attend upon such an office. There is a writ in the *Regist. Nisi sit miles*, f. 177. b. whereby it appears, it was sufficient cause to remove a coroner chosen, if he were not a knight, and had not an hundred shillings rent of freehold. The lord chief justice of the *King's Bench* is the sovereign coroner of the whole realm in person, *i. e.* wheresoever he is. *Lib. Assisarum*, f. 49. *Coke*, lib. 4. *Case of Wardens, &c. of Sadlers*, f. 57. b. The office of a coroner especially concerns the pleas of the crown; but what anciently belonged to him, read at large in *Bracton*, lib. 3. tract. 2. cap. 5, 6, 7 & 8. *Britton*, cap. 1. *Fleta*, lib. 1. cap. 18. and *Horn's Mirror*, lib. 1. cap. Del office del Coroners. But more aptly for the present times, *Staundf. Pl. Cor.* lib. 1. cap. 51.

There are also certain special coroners within divers liberties, as well as those ordinary officers in every county; as *the coroners of the verge*, which is a certain compass about the king's court, whom *Crompt.* in his *Jurisd.* fol. 102. calls *the coroner of the king's house*; of whose authority see *Coke's Rep.* lib. 4. f. 46. By certain charters belonging to some colleges and corporations, they are licensed to appoint their coroner within their own precincts. Of this office see also 4 *Inst.* fol. 271. *Smith de Rep. Angl.* lib. 2. cap. 21. and *Lamb. Eiren.* cap. 3. pag. 380. And of the coroner's office in *Scotland*, read *Skene*, verbo *Iter*.

The coroner, though in original later than the sheriff, was nevertheless very ancient; he was of the two the greater servant or officer. His work was to inquire upon view of manslaughter, and by indictment of all felonies as done *contra coronam*, which formerly were only *contra pacem*, and triable only by appeal; as also he was to inquire of all escheats and forfeitures, and them to seize; he was also to receive appeals of felonies, and to keep the rolls of the crown pleas within the county. It is evident he was an officer in *Alfred's* time; for that king put a judge to death for sentencing one to suffer death upon the coroner's record, without allowing the delinquent liberty of traverse. This officer was made also by election of the freeholders in their county-court, as the sheriff was, and from amongst the men of chiefest rank in the county, and sworn in their presence. *Bacon of Government* 66.

His name is derived *a corona*, and so called, because he is an officer of the crown, and hath consufance of some pleas, which are called *Placita coronæ*. 2 *Inst.* 31.

Coroners in every county, and sheriffs, were ordained to keep the peace, when the earls dismissed themselves of the custody of the counties, and bailiffs in place of hundreds. 2 *Inst.* 31. cites *The Mirror*, cap. 1. f. 3.

They are of so great antiquity, that their commencement is not known; per *Dodderidge J.* 3 *Bulst.* 176. *Pasch.* 14 *Jac.*

**Stat.** 4 *Ed. 1.* ft. 2. *de officio coronatoris* [A. D. 1275. Intituled] "Of what things a coroner shall inquire."

"A coroner of our lord the king ought to inquire of these things, if he be certified by the king's bailiffs, or other honest men of the country: First, he shall go to the places where any be slain, or suddenly dead, or wounded, or where houses are broken, or where treasure is said to be found, and shall forthwith command four of the next towns, or five or six, to appear before him in such a place; (2) and when they are come thither, the coroner upon the oath of them shall inquire in this manner, that is to wit, If they know where the person was slain, whether it were in any house, field, bed, tavern, or company, and who were there: Likewise it is to be inquired, who were culpable either of the act or of the force, and who were present, either men or women, and of what age soever they be (if they can speak, or have any discretion;) (3) and how many soever be found culpable by inquisition in any of the manners aforesaid, they shall be taken and delivered to the sheriff, and shall be committed to the gaol; (4) and such as be founden, and be not culpable, shall be attached until the coming of the justices, and their names shall be written in rolls. (5) If it fortune any such man be slain, which is found in the fields or in the woods, first it is to be inquired, whether he were slain in the same place, or not; (6) and if he were brought and laid there, they shall do so much as they can to follow their steps that brought the body thither, whether he were brought upon a horse or in a cart: (7) It shall be inquired also, if the dead person were known, or else a stranger, and where he lay the night before; (8) and if any be found culpable of the murder, the coroner shall immediately go unto his house, and shall inquire what goods he hath, and what corn he hath in his graunge; and if he be a freeman, they shall inquire how much land he hath, and what it is worth yearly; and further, what corn he hath upon the ground. (9) And when they have thus inquired upon every thing, they shall cause all the land, corn and goods to be valued, in like manner as if they should be sold incontinently, and thereupon they shall be delivered to the whole township, which shall be answerable before the justices for all; (10) and likewise of his freehold, how much it is worth yearly over and above the service due to the lords of the fee; and the land shall remain in the king's hands, until the lords of the fee have made

Murther.

Inquiry of the offenders.

A man found slain.

The murderer found culpable.

fine for it. (11) And immediately, upon these things being inquired, the bodies of such persons being dead or slain shall be buried.

Persons  
drowned or  
suddenly dead.

Bro. Coron.  
175. Fitz.  
Coron. 241,  
265, 436, 446.  
Treasure  
found.

Appeal of  
rape.

Appeal of  
wounds or  
maim.  
Rast. 45.

Principals and  
accessary.

Deodands.  
Wreck of the  
sea.

Suspected per-  
sons.  
Huy and cry.  
3 H. 7. c. 1.  
12 Ann. st. 2.  
c. 18.

*Secl. 2.* "In like manner it is to be inquired of them that be drown-  
ed, or suddenly dead, and after such bodies are to be seen, whether they  
were so drowned, or slain, or strangled by the sign of a cord tied streight  
about their necks, or about any of their members, or upon any other  
hurt found upon their bodies, whereupon they shall proceed in the form  
abovesaid; (2) and if they were not slain, then ought the coroner to at-  
tach the finders, and all other in the company. (3) A coroner also ought  
to inquire of treasure that is found, who were the finders, and likewise  
who is suspected thereof; and that may be well perceived where one li-  
veth riotously, haunting taverns, and hath done so of long time; hereupon  
he may be attached for this suspicion by four, or six or more pledges, if  
he may be found. (4) Further, if any be appealed of rape, he must be  
attached, if the appeal be fresh, and they must see apparent sign of truth  
by effusion of blood, or an open cry made; (5) and such shall be attach-  
ed by four or six pledges, if they may be found: (6) If the appeal were  
without cry, or without any manifest sign or token, two pledges shall be  
sufficient. (7) Upon appeal of wounds and such like, specially if the  
wounds be mortal, the parties appealed shall be taken immediately and  
kept until it be known perfectly, whether he that is hurt shall recover or  
not; (8) and if he die, the defendant shall be kept; and if he recover  
health, they shall be attached by four or six pledges, after as the wound  
is great or small. (9) If it be for a maim, he shall find no less than four  
pledges; if it be for a small wound, two pledges shall suffice. (10) Also  
all wounds ought to be viewed, the length, breadth and deepness, and with  
what weapons, and in what part of the body the wound or hurt is, and  
how many be culpable, and how many wounds there be, and who gave  
the wound; (11) all which things must be inrolled in the roll of the co-  
roners. (12) Moreover, if any be appealed of any act done, as princi-  
pal, they that be appealed of the force shall be attached also, and surely  
kept in ward, until the principals be attainted or delivered. (13) Con-  
cerning horses, boats, carts, &c. whereby any are slain that properly are  
called *Deodands*, they shall be valued and delivered unto the towns, as  
before is said. (14) Concerning wreck of the sea, wheresoever it be  
found, if any lay hands on it, he shall be attached by sufficient pledges,  
and the price of the wreck shall be valued and delivered to the towns.  
(15) If any be suspected of the death of any man being in danger of life,  
he shall be taken and imprisoned, as before is said. (16) In like manner  
huy shall be levied for all murders, burglaries, and for men slain, or in  
peril to be slain, as otherwise is used in *England*, and all shall follow the  
huy and steps as near as can be; and he that doth not, and is convict  
thereupon, shall be attached to be afore the justices of the gaol, &c."

By stat. 14 *Ed. 3. st. 1. c. 8.* [*A. D. 1340.*] "No coroner shall be  
chosen, unless he have land in fee sufficient in the same county, where-  
of he may answer to all manner of people."

**Stat. 28 Ed. 3. c. 6.** [*A. D. 1354. Intituled*] “Who shall be coroners, and by whom, and where they shall be chosen.”

*Item* it is ordained and accorded, That all coroners of the counties shall be chosen in the full counties, by the commons of the same counties, of the most meet and most lawful people that shall be found in the said counties to execute the said office; (2) saved always to the king and other lords which ought to make such coroners, their seigniories and franchises.” 3 Ed. 1. c. 10.  
Ralt. 133.

**Stat. 25 Geo. 2. c. 29.** [*A. D. 1752. Intituled*] “An act for giving a proper reward to coroners for the due execution of their office; and for the amoval of coroners upon a lawful conviction for certain misdemeanors.”

“Whereas the office of coroner is a very ancient and necessary office: and whereas by an act made in the third year of the reign of king *Henry 3* Hen 7. c. 1. the Seventh, reciting that coroners had not, nor ought to have, any thing by the law for their office doing; which oft-time had been the occasion that coroners had been remiss in doing their office: It was ordained, That a coroner should have for his fee, upon every inquisition taken upon the view of the body slain, thirteen shillings and four pence, of the goods and chattels of him that is the slayer and murderer, if he have any goods; and if he have no goods, of such amerciaments as should fortune any township to be amerced, for the escape of the murderer: And whereas the said fee of thirteen shillings and four pence, due only upon an inquisition taken upon the view of a body slain or murdered, and payable only out of the goods and chattels of the slayer or murderer, or out of the amerciaments imposed upon the township, if the murderer escape, is not an adequate reward for the general execution of the said office: To the intent therefore that coroners may be encouraged to execute their office with diligence and integrity; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons, in this present parliament assembled, and by the authority of the same, That for every inquisition, not taken upon the view of a body dying in a gaol or prison, which from and after the twenty-fourth day of *June* one thousand seven hundred and fifty-two, shall be duly taken within that part of *Great Britain* called *England*, by any coroner or coroners, in any township or place, contributory to the rates directed by an act made in the twelfth year of the reign of his present majesty, intituled, *An act for the more easy assessing, collecting and levying of county rates*, the sum of twenty shillings; and for every mile which he or they shall be compelled to travel, from the usual place of his or their abode, to take such inquisition, the further sum of nine pence, over and above the said sum of twenty shillings, shall be paid to him or them out of any monies arising from the rates before-mentioned, by order of the justices of the peace in their general or quarter sessions assembled, for the county, riding, division or liberty where such inquisition shall have been taken, or the major

Coroner to be paid 20s. for every inquisition taken in any township contributting to the county rates, (except on bodies dying in gaol) and 9d for every mile he shall be obliged to travel, to be paid out of the county rates.



for part of them, are hereby authorized and directed to make; for which order no fee or reward shall be paid to the clerk of the peace or any other officer.

and for every inquisition on bodies dying in gaol, as the justices shall think fit;

*Seff. 2.* " And be it further enacted by the authority aforesaid, That for every inquisition which, from and after the said twenty-fourth day of *June* one thousand seven hundred and fifty-two, shall be duly taken upon the view of a body dying in any gaol or prison, within that part of *Great Britain* called *England*, by any coroner or coroners of a county, so much money not exceeding the sum of twenty shillings, shall be paid to him or them, as the justices of the peace in their general or quarter sessions assembled for the county, riding or division wherein such gaol or prison is situate, or the major part of them, shall think fit to allow, as a recompence for his or their labour, pains and charges in taking such inquisition, to be paid in like manner by order of the said justices, or the major part of them, out of any monies arising from the said rates; which order the said justices of the peace so assembled, or the major part of them, are hereby authorized and directed to make; for which order no fee or reward shall be paid to the clerk of the peace or any other officer.

and for inquisitions on a body slain, 13s. 4d. over and above.

*Seff. 3.* " Provided nevertheless, That over and above the recompence hereby limited and appointed for inquisitions taken as aforesaid, the coroner or coroners who shall take an inquisition upon the view of a body slain or murdered, shall also have the fee of thirteen shillings and four pence, payable by virtue of the said act made in the third year of the reign of king *Henry* the Seventh, out of the goods and chattels of the slayer or murderer, or out of the amerciaments imposed upon the township, if the slayer and murderer escape; any thing in this act contained to the contrary thereof in any wise notwithstanding.

Coroner taking more, guilty of extortion.

*Seff. 4.* " Provided also, and be it declared and enacted by the authority aforesaid, That no coroner, to whom any benefit is given by this act, shall, by colour of his office, or upon any pretext whatsoever, take for his office doing, in case of the death of any person, any fee or reward, other than the said fee of thirteen shillings and four pence, limited as is aforesaid by the said act made in the third year of the reign of king *Henry* the Seventh, and other than the recompence hereby limited and appointed; upon pain of being deemed guilty of extortion.

Coroners for particular places excepted.

*Seff. 5.* " Provided likewise, and be it further enacted by the authority aforesaid, That no coroner of the king's household, and of the verge of the king's palaces, nor any coroner of the admiralty, nor any coroner of the county palatine of *Durham*, nor any coroner of the city of *London* and borough of *Southwark*, or of any franchises belonging to the said city; nor any coroner of any city, borough, town, liberty or franchise, which is not contributory to the rates directed by the said act, made in the twelfth year of the reign of his present majesty, or within which such rates have not been usually assessed, shall be intitled to any fee, recompence or benefit given to or provided for coroners by this act; but that it shall and may be lawful for all such coroners as are last-mentioned, to have and receive all such fees, salaries, wages and allowances, as they were intitled

intituled to by law before the making of this act, or as shall be given or allowed to them by the person or persons by whom they have been or shall be appointed.

*Sett.* 6. " And be it further enacted by the authority aforesaid, That if any coroner, who is not appointed by virtue of an annual election or nomination, or whose office of coroner is not annexed to any other office, shall from and after the said twenty-fourth day of *June* one thousand seven hundred and fifty-two, be lawfully convicted of extortion, or wilful neglect of his duty, or misdemeanor in his office, it shall be lawful for the court before whom he shall be so convicted, to adjudge that he shall be amoved from his office; and thereupon, if such coroner shall have been elected by the freeholders of any county, a writ shall issue for the amoving him from his office, and electing another coroner in his stead, in such manner as writs for the amoval or discharge of coroners, and for electing coroners in their stead, are in any cases already directed by law: and if the coroner so convicted shall have been appointed by the lord or lords of any liberty or franchise, or in any other manner than by the election of the freeholders of any county, the lord or lords of such liberty or franchise, or the person or persons intitled to the nomination or appointment of any such coroner, shall, upon notice of such judgment of amoval, nominate and appoint another person to be coroner in his stead.

Coroner convicted of misdemeanor in his office, to be amoved.

Mr. Serjeant *Poole* and Mr. *Clayton* shewed cause against a rule which had been moved for by Mr. *Norton*, " to quash a presentment or inquisition found by the *grand jury* of the county of *York*, at the general session of *Oyer and Terminer* for that county:" which Mr. *Norton* objected to, as being *coram non judice*; for, he said, the grand jury had no authority to make such a presentment, or find such an inquisition, under their general charge from the judge of assize, whatever might be the case if the judge had particularly directed and presided over an inquisition of this kind, on the neglect of the coroner. The fact found was, " That the mare of *John Killinghall*, Esq; was the cause of the death of one *William Stelling*; " and was of the value of 10*l*." It happened that the coroner had not taken any inquisition at all, upon this death: so that the lord of the manor finding himself likely to lose his deodand, had made this application at the assizes, where the grand jury found this inquisition or presentment; which was afterwards removed hither by *certiorari*. Mr. Serjeant *Poole* and Mr. *Clayton* endeavoured to support it. This inquisition, they said, before a grand jury is *traversable*, (which a coroner's inquisition is not;) and therefore does nobody any injury. And as the coroner had taken none at all upon the present occasion, *this method was necessary* to be taken, in order to come at the deodand. 1 *H. H. P. C.* 419. c. 32. of deodands, shews most expressly that this may be done before commissioners of gaol delivery, *Oyer and Terminer*, or of the peace, if omitted by the coroner. So does 1 *H. P. C.* 414. in treating of inquisitions; where *Laughton's* case, *H. 37 Eliz.* is cited; and it is said to be " inquisible before the justices of *oyer and Terminer*, yea, or of the peace; and that it had been " adjudged

Inquisition on an untimely death may be taken by justices of gaol delivery, *oyer and terminer*, or of the peace, if omitted by the coroner. 1 *Bur. Rep.* 17. 18. *Mich.* 30 *Geo. 2. Rex v. Killinghall.*

“ adjudged accordingly.” *M.* 1656. in *Greave's* case. 3 *Inst.* 55. c. 8. *Note b. in margin*, makes a difference between inquisitions taken before justices of the peace as to having a traverse. 2 *Roll. Abr.* 96. pl. 3. proves that an indictment may be taken before justices of peace, and of *Oyer and Terminer*. 2 *Lev.* 140. *Rex v. Parker*, is in point, “ That the “ coroner’s omission may be supplied by commission of inquiry; or the “ justices of peace or of assize may inquire of it, without commission.” 2 *H. H. P. C.* 58. cap. 8. concerning the coroner and his court, and his authority in pleas of the crown, proves that grand juries have this jurisdiction in case the coroner neglects it. 2 *H. H. P. C.* 59. *ad idem*. It is there said “ that justices of peace, or *Oyer and Terminer*, or of the King’s “ Bench, may inquire, if the coroner do not: but that THAT presentment is traversable, which the presentment of the coroner of a *felo de se* “ is not.” Upon these authorities, they said, my lord *Falconbridge* (the lord of the manor) was advised to take this method: but the judge of assize (Mr. Justice *Birch*) declined to meddle with it, or to have the inquisition taken before him particularly, or to give any direction about it. They added these cases also, 1 *Ventr.* 352. in the note at bottom. *Poph.* 209. *Anon*; and *S. C.* (apparently) in *Noy* 87. “ It may be done before justices of peace.” 1 *Ventr.* 181, 182. *Stalack's* case. “ If a coroner omits “ to inquire, this court may do it, as supreme coroner of *England*; or “ may make commissioners to inquire: or commission of *Oyer and Terminer* may inquire. But then it is not *super visum corporis*; and therefore may be traversed.” Mr. *Norton contra*. This is a presentment *ex parte*; and a presentment of intitling, in order to found an odious and superstitious claim; and all transacted in secret. The cases cited only prove, “ That, in default of the coroner’s having inquired, the justices “ of *Oyer and Terminer*, and of the peace, may make the inquiry; and “ that it is traversable.” They say, that we could not have traversed the coroner’s inquisition: (which, however, I deny:) but this we may traverse; and therefore can’t be injured by it. But it will be said “ that the putting “ a man to a traverse, is no injury?” 4 *Inst.* 197, 198. enters largely into the subject of traverses; and condemns secret inquests and offices. Now this is an office of intitling; and therefore ought to be publicly and openly found. Lord *Mansfield*: By express statutes. And I remember a case of the late duke of *Buckingham's* heirs; where, upon application to the court of Exchequer, notice was directed to be given: though, in general, notice is not necessary. Therefore I think this question can’t be supported. And inquisitions before the coroner are traversable. [*V. 2 H. H. P. C.* 416. where that author declares his own opinion accordingly.] Mr. Just. *Denison*: I think it cannot be supported. Mr. Just. *Foster*: I am of the same opinion. By the court, rule to quash the presentment made

Leave to take absolute.

new inquisition on view of the body.  
1 *Stran.* 167.  
*Rex v. Saunders.*

Mr. *Yorke* moved for leave for the coroner to take up the body, and take a new inquisition, according to 2 *Sid.* 101. *Salk.* 377. which was granted; and it was said the coroner could not do it without leave of the court.

The

The court granted a rule for the coroner of *Wenlock* in *Com' Salop*, to take up a body, in order for a new inquisition, the former having been quashed.

Rule for coroner to take up the body.  
1 *Stran.* 533.  
Anon'.

## Cottage.

A Cottage (Sax. *Cote*) is a little house for habitation, without any land belonging to it. *Wood, b. 3. c. 3.*

**Stat. 31 Eliz. c. 7.** [*A. D. 1589. Intituled*] “ An act against the erecting and maintaining of cottages.”

“ For the avoiding of the great inconveniencies which are found by experience to grow by the erecting and building of great numbers and multitude of cottages, which are daily more and more increased in many parts of this realm; (2) Be it enacted by the queen's most excellent majesty, and the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That after the end of this session of parliament, no person shall within this realm of *England* make, build or erect, or cause to be made, builded or erected, any manner of cottage for habitation or dwelling, nor convert or ordain any building or housing made, or hereafter to be made, to be used as a cottage for habitation or dwelling, unless the same person do assign and lay to the same cottage or building, four acres of ground at the least, to be accounted according to the statute or ordinance *de terris mensurandis*, being his or her own freehold or inheritance lying near to the said cottage, to be continually occupied and manured therewith, so long as the same cottage shall be inhabited; (3) upon pain that every such offender shall forfeit to our sovereign lady the queen's majesty, her heirs and successors, ten pounds of lawful money of *England*, for every such offence.

Penalty for building a cottage without four acres of land to it, and the like for placing or suffering inmates.  
2 *Bultr.* 264.  
*Godbolt* 383.  
pl. 470.  
2 *Intt.* 736.  
*Hob.* 250.  
1 *Ventr* 107.  
1 *Sid* 359, 360

*Sett.* 2. “ And be it further enacted by the authority aforesaid, That every person which, after the end of this session of parliament, shall willingly uphold, maintain and continue any such cottage hereafter to be erected, converted or ordained for habitation or dwelling, whereunto four acres of ground, as is aforesaid, shall not be assigned and laid to be used and occupied with the same, shall forfeit to our said sovereign lady the queen's majesty, her heirs and successors, forty shillings for every month that any such cottage shall be by him or them upholden, maintained and continued.

*Cro. Jac.* 603.

The forfeiture for continuing of a new cottage.

*Sett.* 3. " Provided also, and be it enacted, That from and after the feast of *All-Saints* next coming, there shall not be any inmate, or more families or households than one, dwelling or inhabiting in any one cottage, made, or to be made or erected, (2) upon pain that every owner or occupier of any such cottage, placing, or willingly suffering any such inmate, or other family than one, shall forfeit and lose to the lord of the leet, within which such cottage shall be, the sum of ten shillings of lawful money of *England*, for every month that any such inmate, or other family than one shall dwell or inhabit in any *one* cottage as aforesaid: (3) And that all and every lord and lords of leet and leets, and their stewards within the precinct of his and their leet and leets, shall have full power and authority within their several leets, to enquire and to take presentment by the oath of the jurors, of all and every offence and offences in this behalf; (4) and upon such presentment had or made, to levy by distress to the use of the lord of the leet, all such sums of money as so shall be forfeited: (5) And moreover, that it shall be lawful for the lord of every such leet where such presentment shall be made, to recover to his own use any such forfeiture, by action of debt, in any of the queen's majesty's courts of record, wherein no essoin, protection, or wager of law shall be allowed.

More families than one may not be placed in one cottage, &c.

43 El. c. 2. f. 5.

The penalty for receiving of an inmate. Coke 665.

*Sett.* 4. " And be it further enacted by the authority aforesaid, That all justices of assizes and justices of peace in their open sessions, and every lord within the precinct of his leet, and no others, shall have full power and authority within their several limits and jurisdictions, to enquire of, hear and determine all offences contrary to this present act, as well by indictment, as otherwise by presentment or information; (2) and to award execution for the levying of the several forfeitures aforesaid, by *Fieri facias*, *Elegit*, *Capias*, or otherwise, as the cause shall require.

Who may hear and determine the offences aforesaid, and by what means. 1 Salk. 195.

*Sett.* 5. " Provided always, That this statute, or any thing therein contained, shall not in any wise be extended to any cottage which shall be ordained or erected to, or for habitation or dwelling in any city, town corporate, or ancient borough or market town within the realm; (2) nor to any cottages or buildings which shall be erected, ordained or converted to and for the necessary and convenient habitation or dwelling of any workmen or labourers in any mineral works, coal mines, quarries or delfs of stone or slate, or in or about the making of brick, tile, lime or coals within this realm; so as the same cottages or buildings be not above one mile distant from the place of the same mineral or other works, and shall be used only for the habitation and dwelling of the said workmen; (3) nor shall in any sort prejudice, charge or impeach any person or persons for the erecting, maintaining or continuing of any such cottages, as are before in this proviso mentioned and specified.

Cottages in cities or market towns, or for workmen in mineral works, quarries, &c.

Certain cottages to which this statute shall not extend.

*Sett.* 6. " Provided always, That this act shall not extend to any cottage to be made within a mile of the sea, or upon the side of such part of any navigable river where the admiral ought to have jurisdiction, so long as no other person shall therein inhabit, but a sailor or man of manual occupation,

occupation, to or for making, furnishing or victualling of any ship or vessel used to serve on the sea; (2) nor to any cottage to be made in any forest, chase, warren or park, so long as no other person shall therein inhabit, but an under-keeper or warrener, for the good keeping of the deer or other game or warren; (3) nor to any cottage heretofore made, so long as no other person shall therein inhabit, but a common herd-man or shepherd, for keeping the cattle or sheep of the town, or a poor, lame, sick, aged or impotent person; (4) nor to any cottage to be made, which for any just respect upon complaint to the justice of assize at the assizes, or to the justices of peace at the quarter-sessions, shall by their order entered in open assizes or quarter-sessions, be decreed to continue for habitation, for and during so long time only as by such decree shall be tolerated and limited." 35 *Eliz. cap. 6.* 43 *Eliz. cap. 2.*

By stat. 43 *Eliz. c. 2. sect. 5.* The churchwardens and overseers, by consent of the lord of the manor, may erect cottages on the wastes and commons, for the habitation of the poor, but for no other purpose.

The inconveniencies, says lord Coke, that grow by unlawful cottages, and inmates in cottages against this statute, as appears by the preamble, are great; being nests to hatch idleness, the mother of pickings, thievings, stealing of wood, &c. tending also to the prejudice of lawful commoners; for that new-erected cottages within the memory of man, though they have four acres of ground or more laid to them according to the act, ought not to be common in the wastes of the lord; but the greatest inconvenience of all this is, the ill breeding and educating of youth; which inconveniencies may be easily helped and remedied by the provisions of this excellent law, if lords of leets and their stewards would look to the execution of this act, which we hold the readiest means; for albeit the cottage erected or converted, cannot by any provision in this statute be demolished or pulled down, yet the execution of the penalty of this act will make it uninhabitable, and work the desired effect, and they may also be amerced for wrongful commoning in the court baron. 2 *Inst.* 740.

J. S. was indicted upon the statute of 31 *Eliz.* because he had erected a cottage five years last past, and had not allotted four acres of land according to the said statute *de terris mensurandis*, 33 *Ed. 1.* and had continued it ever since. The first exception was, that this indictment was for erecting a cottage five years past; whereas every offence ought to be punished within two years by indictment or information, by the express word of the statute of 31 *Eliz. cap. 5.* otherwise it is not punishable, and therefore not good. 2dly, Because he does not say that he voluntarily continued it; which are the express words of the statute. 3dly, For that it is to be by the statute *De terris mensurandis*; whereas there is not any such statute, but it is an ordinance only; and for these causes the indictment was held ill; and the defendant was discharged. *Cro. J.* 603, 604. *pl. 30.* *Mich. 18 Jac. B. R. Stowe's case.*

## Cottage.

One was indicted for erecting of a cottage. It was moved, that the indictment was insufficient; for that the words of 31 *Eliz. cap. 7.* are, *shall willingly uphold, maintain and continue*, and the indictment is only, that he continued, and so wants the words *willingly uphold*, according to the statute. It did not appear in the indictment that it was newly erected, for it is only that he continued, and not that he erected. The indictment was quashed, because being a penal law, it was not pursued. *Godb. 383. pl. 470. Pasch. 3 Car. B. R. Day's case.*

If lord of a manor will suffer poor men to erect cottages on his waste, though he takes no rent for them, yet a fine shall be set upon them, and the lord of the manor shall pay the fine; and after the cottage built, if the manor descends, or is conveyed to another, if he receives any small rent for the continuance of the cottage, he also shall pay the fine that shall be assessed, because he upholds. Agreed. *Jo. 272, 273. 8 Car. Christian Smith's case, in Itin' Windsor.*

The statute, which gives power to erect cottages in the waste for poor people, does not extend to waste within forests. *Jo. 269. in Itinere Windsor, 8 Car. in Whitlock's case.*

In *Windleham* in the county of *Surrey*, there were divers cottages and inclosures made upon the king's soil, and afterwards the king sells the manor: *Per Noy* attorney general, This has not dispensed with the purprestures, but the patentee must be fined for the continuance of them, and they are to be pulled down, if they are not now arrented; for else the king's grant should be taken by implication to continue a wrong to his forest, which the king never intended; and accordingly they were fined and arrented. *Jo. 277. See 6 Vin. Abr.*

County

## County-Court.

COUNTY court (*curia comitatus*) by *Lambard* is otherwise called *conventus*, in his explication of *Saxon* words, and divided into two sorts; one retaining the general name, as *The county-court* held every month by the sheriff, or his deputy the under-sheriff, whereof you may read in *Crompt. Jurisd. fol. 231*. The other called *The turn*, held twice a year; of which see more in its proper place, and *Crompt. Jurisd. ibid.* This county-court had in ancient times the cognizance of great matters, as may appear by *Glanvill, lib. 1. cap. 2, 3, 4.* By *Bracton* and *Britton* in divers places, and by *Fleta, lib. 2. cap. 62.* but was abridged by the statute of *Magna Charta, cap. 17.* and much more by *1 Ed. 4. cap. 1.* It had also, and hath, the determination of certain trespasses and debts under forty shillings. *Britton, cap. 27, 28.* What manner of proceedings was of old used in this court, see *Fleta ubi supra.*

Before the courts at *Westminster* were erected, the county-courts were the chief courts of this kingdom. Amongst the laws of king *Edgar*, this is one, viz. *Let the hundred-court be kept as anciently, &c. and let there be two county-courts in a year; in which county-court there shall be a bishop, and an alderman or earl, where one shall judge according to the common law, and the other according to the ecclesiastical law.*

This is the foundation of the united power of the bishop and earl to sit and try causes in one court; the conjunction of which powers mutually to assist each other, is as ancient as the *English* government itself; but these powers were separated by *William the Conqueror*; and soon after all the ecclesiastical business was brought into the court, so called, and the law business into the *King's Bench.* *Cowell. edit. 1727.*

*Magna Charta 9 Hen. 3. cap. 35.* No county shall be held but from month to month; and where a greater term hath been used, it shall be greater. Nor shall any sheriff or his bailiff make his turn by the hundred but twice in the year, in the due and customed place, to wit, once after *Easter*, and once after *Michaelmas.* And the view of frankpledge shall then be made, so that every one have his franchises. And the view of frankpledge shall be made, so that the king's peace be kept; and the tithing kept intire.

*Stat. Marlber. 52 Hen. 3. cap. 10.* Archbishops, bishops, earls, barons, or women, shall not need to come to the sheriff's turn, unless their presence be specially required for some cause. And if any have tenements in divers hundreds, they shall not need to come to the turn, but in the bailiwicks where they be conversant.

*Stat. West. 1. 3 Ed. 1. cap. 33.* No sheriff shall suffer any barretor or maintainer of pleas in the counties, nor stewards who are not attorneys of their lords, to make suit; and if any do it, the king will grievously punish the sheriff and him.

Stat.



## County-Court.

Stat. *Westm.* 2. 13 *Ed.* 1. *cap.* 13. The sheriffs in their turns and elsewhere, when they have to enquire of malefactors, by the precept of the king, or of their office, shall make their inquests by lawful men, at least twelve, who shall set their seals to their inquisitions; and the sheriffs shall take and imprison those whom by such inquisitions they shall find guilty, as they have used to do. And if they shall imprison others, such persons imprisoned shall have their action by writ of imprisonment against the sheriff, as against any other person. And so it shall be observed of every bailiff of liberty.

Stat. 1 *Ed.* 3. *cap.* 17. Sheriffs and bailiffs of franchises, and all others who take indictments in their turns or elsewhere, shall take such indictments by roll indented, whereof one part shall abide with the indictors; so that one of the inquest may shew one part of the indenture to the justice, when he shall come to make deliverance.

Stat. 31 *Ed.* 3. *stat.* 1. *cap.* 15. Every sheriff shall make his turn once in the month after *Easter*, and the other turn in the month after *St. Michael*; and if they hold them otherwise, they shall lose their turn for the time.

Stat. 19 *Hen.* 7. *cap.* 24. The shire-court of *Suffex* shall be holden one time at *Chichester*, and the next time at *Lewes*, and so *alternis vicibus*; and every shire-court holden to the contrary shall be void.

Stat. 2 & 3 *Ed.* 6. *cap.* 25. *sect.* 2. The county-courts shall be kept every month, and no otherwise.

*Sect.* 3. The sheriff of *Northumberland* shall keep the county-court in the town of *Alnwick*, and in no other place.

Those county-courts which used to be held on the *Monday* for *York*, shall be held on *Wednesday*. 7 & 8 *W.* 3. *cap.* 25. *f.* 9.

## County-Rate.

STAT. 12 *Geo.* 2. *c.* 29. [*A. D.* 1739. *Intituled*] “An act for the more easy assessing, collecting and levying of county rates.”

Preamble, re-  
citing the acts,  
22 *H.* 8. *c.* 5.  
1 *Ann.* *stat.* 1.  
*c.* 18.

“Whereas by an act passed in the twenty-second year of the reign of king *Henry* the Eighth, for repairing and amending bridges and highways: And whereas by another act passed in the first year of the reign of her late majesty queen *Anne*, to explain and alter the said act, it is, for the more easy taxing and collecting the money for the repair of such bridges and highways thereunto adjoining (amongst other things), enacted, That the justices of the peace within the several limits of their commissions

shall

shall at their general or quarter sessions of the peace have full power and authority, upon due presentment to them made that any bridge within their respective commissions or authorities is out of repair, and which by them hath usually, or ought to have been, repaired and maintained, to make assessments upon every town, parish or place, within their respective commissions for that purpose, in proportions upon each respective town and parish, as they usually have been assessed towards the repair of bridges; which assessments are to be levied and collected in the manner prescribed by the said act: and whereas by an act passed in the eleventh and twelfth years of the reign of his late majesty king *William* the Third, <sup>11 & 12 W. 3. c. 19.</sup> to enable justices of the peace to build and repair gaols in their respective counties, it is (amongst other things) enacted, That it shall and may be lawful for the justices of the peace, or the greater number of them, within the limits of their commissions, upon presentment of the grand jury or grand juries, at the assize, great sessions, and general gaol-delivery, held for the same county, of the insufficiency or inconveniency of their gaol or prison, to conclude and agree upon such sum or sums of money, as upon examination of able and sufficient workmen shall be thought necessary for the building, finishing and repairing a publick gaol or gaols, belonging to the shire or county whereof they are justices of the peace; and by warrant under their hands and seals, or under the hands and seals of the greater number of them, by equal proportions to distribute and charge the sum or sums of money to be levied for the uses aforesaid upon the several hundreds, lathes, wapentakes, rape, ward, or other division of the said county, in the manner prescribed by the said act; which said act was revived and continued by an act passed in the tenth year of the reign of her late majesty queen *Anne*, for seven years and to the end of the then next session of parliament, and made perpetual by an act of the sixth year of the reign of his late majesty king *George* the First: and whereas by an act passed in the seventh year of the reign of king *James* the First, for <sup>7 Jac. 1. c. 4.</sup> the due execution of divers laws and statutes heretofore made against rogues, vagabonds and sturdy beggars, and other lewd and idle persons, it is (amongst other things) enacted, That there shall be erected, built, or otherwise provided, within every county of this realm of *England* and *Wales*, where there is not one house of correction already built, provided or continued, one or more fit and convenient house or houses of correction, by the justices of the peace, or the more part of them, at their respective quarter-sessions; and that the masters or governors of the said houses of correction shall have such sums of money yearly as shall be thought meet by the said justices; the same to be paid quarterly beforehand, by the treasurers appointed by an act made in the three and fortieth year of the late queen *Elizabeth*, intituled, *An act for the relief of the poor*; which said act was to continue for seven years, and till the end of the next session of parliament, and was further continued by an act passed in the third year of the reign of king *Charles* the First, intituled, *An act for the continuance and repeal of divers statutes*, unto the end of the first session of the next parliament; and by an act passed in the sixteenth year of the same reign

- reign continued in force, until repealed by some other act of parliament :
- 43 Eliz. c. 2. and whereas by an act passed in the forty-third year of the reign of queen *Elizabeth*, intituled, *An act for the relief of the poor*, it is (amongst other things) enacted, That the justices of the peace of every county or place corporate, or the more part of them, in their general sessions to be holden next after the feast of *Easter*, and so yearly, as often as they shall think meet, shall rate every parish to such a weekly sum of money as they shall think convenient, so as no parish be rated above the sum of sixpence, nor under the sum of a halfpenny, weekly to be paid, and so as the total sum of each taxation of the parishes in every county amount not to above the rate of two pence for each parish within the said county ; and it is thereby likewise enacted, That the justices of the peace at their general quarter-sessions to be holden at the time of such taxation shall set down what competent sums of money shall be sent quarterly out of every county or place corporate, for the relief of the poor prisoners of the *King's Bench* and *Marshalsea* ; and also of such hospitals and alms-houses as shall be in the said county, and what sums of money shall be sent to every one of the said hospitals and alms-houses ; so as there be sent out of every county yearly twenty shillings at the least to each of the said prisons of the *King's Bench* and *Marshalsea* ; which sums are rateably to be assessed upon every parish, and to be levied and collected as in and by the said act is directed :
- 14 Eliz. c. 5. and whereas by an act passed in the fourteenth year of the reign of queen *Elizabeth*, intituled, *An act how vagabonds shall be punished, and the poor relieved*, it is enacted, That the justices of the peace of every county, or the more part of them, in their general quarter-sessions, shall rate every parish at such reasonable sums of money, for the relief of prisoners, as they shall think convenient, so as no parish be rated above six pence or eight pence weekly ; and the churchwardens of every parish shall levy the same every *Sunday*, and once in every quarter pay the said sums to the high constables or other head officers ; and the said high constables and head officers shall pay the money received of the said churchwardens to such person as shall be appointed by the said justices in sessions, to be by them distributed weekly for the relief of prisoners ; so much of which said act as relates to the taxing, levying, receiving and employing of gaol money, was revived and continued to the end of the then next session of parliament, by an act passed in the first year of the reign of king *James* the First, intituled, *An act for continuing and reviving of divers statutes, and for repealing of some others* ; and was further continued by an act passed in the twenty-first year of the reign of the said king *James*, intituled, *An act for continuing and reviving of divers statutes, and repeal of divers others* ; and was further continued to the end of the next session of parliament, by an act passed in the third year of the reign of king *Charles* the First, intituled, *An act for the repeal and continuance of divers statutes* ; and by an act passed in the sixteenth year of the same reign, was continued in force, until repealed by some other act of parliament : and whereas by an act
- 19 Car. 2. c. 4. passed in the nineteenth year of the reign of king *Charles* the Second,

intituled, *An act for relief of poor prisoners, and setting them on work*, it is (amongst other things) enacted, That the justices of the peace at their general sessions, or the major part of them, if they think fit, may provide a stock of materials for setting poor prisoners on work, in such manner, and by such ways as other county charges are levied and raised, and provide and pay fit persons to oversee such work, and make such orders concerning the premisses, as they from time to time shall think fit, provided that no parish be rated above six pence by the week towards the premisses: And whereas an act passed in the twelfth year of the reign of her late majesty queen *Anne*, for reducing the laws relating to rogues, sturdy beggars and vagrants, into one act of parliament, and for the more effectual punishing such rogues, vagabonds, sturdy beggars and vagrants, and sending them whither they ought to be sent; it is (amongst other things) enacted, That the justices of the peace at their quarter-sessions may from time to time, when need shall be, by such ways and means as monies for county gaols or bridges may be raised, cause such sums of money to be raised within their respective precincts and jurisdictions, for the passing and conveying or maintaining of rogues and vagabonds, as shall be necessary for those purposes; which said several rates, when collected, are to be paid, by virtue of the said several acts, into the hands of treasurers or receivers to be appointed by the justices at their respective general or quarter-sessions of the peace, and to be accounted for, as in and by the said several acts are recited: And whereas it is apparent that the manner and methods prescribed by the said several respective acts for collecting some of the said rates are impracticable, the sums charged on each parish in the respective divisions being so small, that they do not by an equal pound-rate amount to more than a fractional part of a farthing in the pound on the several persons thereby rateable; and if possible to have been rated, the expence of assessing and collecting the same would have amounted to more than the sum rated: And whereas many and great doubts, difficulties and inconveniencies have arisen in making and collecting other of the said rates: Therefore that the good ends and purposes of the said several statutes may be answered, and the several sums of money thereby intended to be raised may effectually be collected, with as much ease and certainty, and as little expence as can be to the parties obliged by the said laws to pay the same; Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of *September* one thousand seven hundred and thirty-nine, the justices of peace in that part of *Great Britain* called *England*, within the respective limits of their commissions, at their general or quarter-sessions, or the greater part of them then and there assembled, shall have full power and authority, from time to time, to make one general rate or assessment for such sum or sums of money as they in their discretions shall think sufficient to answer all and every the ends and purposes of the before-recited acts, instead and in lieu of the several separate and distinct rates directed thereby

12 Ann. x, stat.  
2. c. 23.

After 1 Sept.  
1739, justices  
to make from  
time to time  
one general  
assessment, in-  
stead of the  
several rates  
appointed by  
several acts;

to be made, levied and collected; which rate shall be assessed upon every town, parish or place within the respective limits of their commissions, in such proportions as any of the rates heretofore made in pursuance of the said several acts have been usually assessed; and the several and respective sums so assessed upon each and every town, parish or place within the respective limits of their commissions, shall be collected by the high constables of the respective hundreds and divisions, in which any town, parish or place doth lie, in such manner, and at such times as is herein after directed.

to be paid out  
of the poor's  
rate of every  
parish to the  
high constable,

*Sect. 2.* " And that the respective sum or sums so to be assessed and collected may be well and truly paid to the respective high constables, Be it further enacted by the authority aforesaid, That the churchwardens and overseers of the poor for the time being of each and every parish and place within the respective counties, cities and liberties, in which they respectively lie, shall and they are hereby required, out of the money collected or to be collected for the relief of the poor of such parish or place, to pay to the high constables of the respective hundreds or divisions of the said counties, cities and liberties, the respective sum or sums of money so rated and assessed upon such parish or place, within the space of thirty days after demand thereof made in writing, to be given to the said churchwardens or overseers of the poor, or any of them, or left at their or either of their dwelling-house or houses, or affixed on any of the church doors of such parish or place to which such officer shall belong, by the said high constable or high constables of the respective hundreds or divisions; which demand the respective high constable or high constables is and are hereby required to make, at such times as the said justices of the peace, or the greater part of them, shall by their order in sessions direct; and the receipt or receipts of such high constable or high constables shall be a full and sufficient discharge to such churchwardens and overseers of the poor, or other person paying the same, and shall be allowed in their accounts as such by the justices of the peace before whom such accounts shall be passed: And in case such churchwardens and overseers of the poor, or any of them, shall neglect or refuse to pay any the sum or sums of money hereby assessed, after demand made as aforesaid; such high constable or high constables shall, and they are hereby empowered to levy the same by distress and sale of the goods and chattels of such churchwardens and overseers, or either of them so refusing or neglecting to pay the same as aforesaid, by warrant under the hands and seals of two or more justices of the peace of the county, riding, division, city, town, corporate, liberty or place, residing in or near such parish or place; rendering the overplus, if any there shall be, after deducting the money assessed, and the charges of the distress and sale, to the owner or owners thereof.

or to be levied  
on them by  
distress,

Where there  
is no poor's  
rate, the petty  
constable of  
the place to  
levy and pay the  
county rate.

*Sect. 3.* " Provided nevertheless, and be it enacted by the authority aforesaid, That in case no rate is or shall be made for the relief of the poor in any parish, township or place; the justices of the peace in their respective general or quarter-sessions, or the greater part of them then

and

and there assembled, shall and may by their order direct the sum of money assessed on such parish, township or place, for the purposes of this act, to be rated and levied on such parish, township or place, by any petty constables or other peace officer of or belonging to the same, in such manner as money for the relief of the poor is by law to be rated or levied; which sum so rated and levied shall be paid by such petty constable or other peace officer to the respective high constable for the hundred, division or liberty wherein such parish, township or place shall lie; and shall be demanded of, paid by, or levied on such petty constable or other peace officer, in the same manner as any rates are herein before directed to be demanded of, paid by and levied on the churchwardens and overseers of the poor, or any of them; and if such petty constable or other peace officer shall pay such sum, before the same shall be so by him rated and levied as aforesaid, he may afterwards rate and levy the same, or shall and may be allowed and reimbursed the said sum of money out of any constable's, or other rate made or to be made on any such parish, township or place, which the said justices of the peace, or the greater part of them, in their sessions shall order and direct.

*Sec. 4.* " And whereas it will be very inconvenient to many towns, parishes and places in the several counties of *York, Derby, Durham, Lancaster, Ckester, Westmorland, Cumberland and Northumberland*, that the rates by this act directed to be paid by and levied on the churchwardens and overseers of the poor for the purposes aforesaid, should be paid out of any rate to be made for the relief of the poor in such towns, parishes and places; Be it therefore enacted by the authority aforesaid, That it shall and may be lawful to and for the justices of the peace for the respective ridings, divisions or counties of *York, Derby, Durham, Lancaster, Ckester, Westmorland, Cumberland and Northumberland*, at their respective general or quarter-sessions, or the greater part of them then and there assembled, if they shall think convenient, to order the sum of money directed to be assessed on any such town, parish or place, for all or any of the purposes of this act, to be paid by and levied on the petty constable of or for any such town, parish or place within the said counties respectively, in such manner as the same is herein directed to be paid and levied, in cases where no rate is made for the relief of the poor; any thing herein contained, or any law, usage or custom to the contrary notwithstanding.

Counties excepted from paying the rate of this act out of the poor's rate.

*Sec. 5.* " Provided always, and be it enacted by the authority aforesaid, That this act, or any thing herein contained, shall not extend or be construed to extend to make any persons, liberties, divisions, or places liable to pay to any rate to be made in pursuance of this act, to which such person, liberty, division or place did not, or was not liable to contribute before the passing hereof; but that it shall and may be lawful to and for the justices of the peace at their respective general or quarter-sessions, or the greater part of them then and there assembled, to order and ascertain what proportion of any rate to be made by virtue of this act shall be assessed on and paid by the several persons, liberties, divisions, and places, who have usually

Provido, in favour of places heretofore not paying all, or any county rates.

contributed, or are liable to pay only to one or more of, and not to all the rates hereby intended to be raised, and thrown into one general rate or assessment.

High constables to pay the monies to the treasurers appointed by the quarter-sessions,

*Seet. 6.* " And be it further enacted by the authority aforesaid, That the respective high constables shall, and they are hereby required, at or before the next general or quarter-sessions respectively after they or any of them shall have received such sum or sums of money, to pay the same into the hands of such person or persons (being resident in any such county, riding, division, city, liberty or place where such rates shall be respectively made) whom the said justices shall at their respective general or quarter-sessions, or the greater part of them then and there assembled, appoint to be the treasurer or treasurers (which treasurer or treasurers they are hereby authorized and impowered to nominate and appoint); such treasurer or treasurers first giving sufficient security in such sums as shall be approved of by the said justices at their respective general or quarter-sessions, or the greater part of them then and there assembled, to be accountable for the several and respective sums of money which shall be respectively paid to them in pursuance of this act, and to pay such sum or sums of money as shall be ordered to be paid by the justices in their general or quarter-sessions, and for the due and faithful execution of the trusts reposed in him or them; and all and every such sum or sums of money as shall be paid into his or their hands by virtue of and in pursuance of this act, shall be deemed and taken to be the publick stock; and the said treasurer or treasurers shall and are hereby required to pay so much of the money in their hands, to such person and persons as the said justices at their respective general or quarter-sessions, or the greater part of them then and there assembled, shall by their orders from time to time direct and appoint for the uses and purposes of the said recited acts, and for any other uses and purposes to which the publick stock of any county, city, riding, division or liberty, is or shall be applicable by law."

and they to whomsoever the justices shall direct.

Treasurers to keep books of entries,

and to account upon oath.

*Seet. 7.* " And be it further enacted by the authority aforesaid, That the said respective treasurer or treasurers shall and are hereby required to keep books of entries of the several sums respectively received and paid by him or them in pursuance of this act; and is and are also hereby required to deliver in true and exact accounts upon oath if required (which oath the said justices at their respective general or quarter-sessions are hereby impowered to administer) of all and every the sum and sums of money respectively received and paid by him or them, distinguishing the particular uses to which such sum or sums of money have been applied, to the justices at every general or quarter-sessions respectively to be holden within the limits of their commissions; and shall lay before the justices at such sessions the proper vouchers for the same."

High constable's charge.

*Seet. 8.* " And be it further enacted by the authority aforesaid, That the respective high constables shall and they are hereby required to demand and levy such rates and assessments in manner before directed, and shall account for the same before the said justices at their respective general or quarter-sessions, if thereunto required, in the like manner as the said treasurer or treasurers

furers is and are hereby directed to account; and in case such high constables, or any of them, shall neglect or refuse so to demand, levy, or account, then it shall and may be lawful to and for the said justices, at their respective general or quarter-sessions or the greater part of them then and there assembled, to commit such high constable or high constables to the common gaol of the county, riding, division, city, town corporate, liberty or place, there to remain without bail or mainprize, until he or they shall have caused such rates or assessments to be demanded and levied; and shall have rendered a true account or accounts in the manner hereby directed; and in case it shall appear by such account or accounts, that any sum or sums of money is or are remaining in his or their hands, which he or they shall have received of the respective churchwardens and overseers, or other persons, which ought to have been paid to the respective treasurer or treasurers at the time or times limited by this act, or of the respective treasurer or treasurers, in order to be applied to the purposes aforesaid; and if he or they shall neglect or refuse to pay the same over into the hands of the respective treasurer or treasurers, or otherwise, if thereunto required by order of the said justices at their respective general or quarter-sessions, or the greater part of them then and there assembled; then it shall and may be lawful for the said justices at such their general or quarter-sessions, or the greater part of them then and there assembled, to commit such high constable or high constables to the common gaol of the county, riding, division, city, town corporate, liberty or place, there to remain without bail or mainprize, until he or they shall have made full payment of the sum or sums of money, that shall appear to be due on such account or accounts; and all the accounts and vouchers of the said treasurers and high constables shall, after having been passed by the said justices at their respective general or quarter-sessions, be deposited with the clerk of the peace for the time being, of each county respectively, or the town-clerk, high bailiff, or chief officer of any city, town corporate or liberty, who is and are hereby required to keep them among the records of such county, city, town corporate or liberty, to be inspected from time to time by any of the said justices, within the limits of their commissions, as occasion shall require, without fee or reward."

Penalty on default.  
Their and the treasurers vouchers to be kept among the records of the county, &c.

*Sec. 9.* "And be it further enacted by the authority aforesaid, That the receipts of such respective treasurer or treasurers shall be sufficient discharges to all high constables; and the discharges of the said justices of the peace, or the greater part of them, by their orders made at their respective general or quarrer-sessions to such treasurer or treasurers, shall be deemed and allowed as good and sufficient releases, acquittances, or discharges, in any court of law or equity, to all intents and purposes whatsoever."

What shall be their respective discharge.

*Sec. 10.* "And be it further enacted by the authority aforesaid, That no new rate shall be made until it shall appear to the said justices at their respective general or quarter-sessions, or the greater part of them then and there assembled by the accounts of their respective treasurer or treasurers or otherwise, that three fourths of the money, collected by virtue of the preceding rate have been expended for the uses and purposes aforesaid."

The condition on which new rates are to be made.

*Sec.*



Treasurer to  
be continued  
or removed at  
the will of the  
quarter-ses-  
sions.

*Sec. 11.* "And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the said justices of the peace at their respective general or quarter-sessions, or the greater part of them then and there assembled, to continue from time to time such treasurer or treasurers in his or their office or offices, so long as they shall see convenient, and to remove him or them at their pleasure, and appoint any other person or persons in his or their place; and to allow to him or them and every of them, insisting on the same, such reasonable sum or sums of money for his or their care and pains in the execution of such trust, not exceeding twenty pounds by the year, as they in their discretion shall think fit; which they are hereby empowered to direct the payment of, out of the monies arising by the respective rates hereby appointed to be made."

Parishes over-  
rated, to ap-  
peal to the said  
sessions.

*Sec. 12.* "And be it further enacted by the authority aforesaid, That in case the church-wardens and overseers of any parish or place shall at any time have reason to believe the said parish or place is over-rated, such church-wardens and overseers may appeal to the respective justices of the peace at their next general or quarter-sessions, against such part of the rate only as may affect the parishes or places in which they serve such offices; which justices, or the greater part of them then and there assembled, are hereby authorized and empowered to hear and finally determine the same: provided nevertheless, that upon such appeal such rate shall not be quashed or destroyed in regard to any other parishes or places assessed thereby."

Justices to  
make but one  
rate for Mid-  
dlesex.

*Sec. 15.* "And it is hereby further enacted, That there shall be but one rate made and assessed by the justices of the peace of the county of *Middlesex*, in the said county, city and liberty of *Westminster*, for the several purposes aforesaid, and for the repair of the gaol commonly called *New Prison*, in the said county of *Middlesex*."

Provido as to  
the house of  
correction at  
*Westminster*.

*Sec. 16.* "Provided nevertheless, That the justices of the peace for the city and liberty of *Westminster*, at their general or quarter-sessions to be holden for the same city or liberty, or the greater part of them then and there assembled, shall have full power to appoint the governor or master of the house of correction within the said city or liberty; who shall have such sum of money yearly as hath been accustomed for and towards the support and maintenance of the prisoners in his custody, who shall be sick, or unable to work, (not exceeding the present allowance of fifty pounds by the year) and direct the repairs and management thereof as they heretofore have done; and the treasurer or treasurers of the money arising by the rates in the said county of *Middlesex* and city and liberty of *Westminster*, hereby appointed to be collected, shall and is and are hereby required to obey all orders which shall from time to time be made by the said justices of the said city and liberty, or the greater part of them then and there assembled, at their general or quarter-sessions, for the payment of any sum or sums of money for the allowance allotted to such governor or master of the house of correction, and the repairs thereof; which orders shall be good and sufficient discharges to such treasurer or treasurers; any thing herein contained to the contrary thereof in any wise notwithstanding."

*Sect. 17.* “ And be it further enacted by the authority aforesaid, That the justices of the peace at their respective general or quarter-sessions, or the greater part of them then and there assembled, shall be and are hereby impowered to oblige, by their order or orders, the respective high constables and petty constables, or any other person or persons who are or have been impowered to levy, collect or receive any sum or sums of money by virtue of and for the purposes aforesaid, and who have any sum or sums of money in their hands, to account with them at their general or quarter-sessions, in such manner as high constables are directed to account by virtue of this act; and in case such high constables or petty constables, or other person or persons, shall refuse to account or to pay over the money that shall remain in their or any of their hands, when thereunto required by order of the said justices or the greater part of them in their respective general or quarter-sessions assembled; in either of the said cases the said justices shall have the like remedy against them or any of them, as they have against the high constables by virtue of this act, for not accounting for or paying over the money remaining in their hands: and it shall and may be lawful to and for the said justices at their respective general or quarter-sessions, or the greater part of them then and there assembled, and they are hereby impowered to direct and order the payment of the respective sums of money which shall appear to be remaining due, and not applied or disposed of, into the hands of the respective treasurer or treasurers to be appointed by this act; which shall be deemed to be part of the stock of the said counties, cities, ridings, divisions, liberties or places respectively; and to enquire what sums of money are due and owing for the purposes aforesaid; and then to order the payment of such sums as shall appear to them upon such enquiry to be justly due and owing.

Justices impowered to oblige collectors to account with them,

and to order the monies unapplied to be paid to the treasurer.

*Sect. 18.* “ And be it further enacted by the authority aforesaid, That no action or suit shall be commenced or prosecuted against any person or persons, who has or have been or shall be employed in the collecting or receiving any money in pursuance of the said recited acts, or this present act, on any rate or rates which has or have been or shall be quashed or discharged on any *certiorari* brought or to be brought in any of his majesty's courts of record at *Westminster*, or otherwise, for any money collected or received, or to be collected or received on any such rate or rates, before such writ of *Certiorari* was or shall be brought and allowed; and that justice may be done to such persons who shall or may pay towards any rate which shall be quashed or discharged, the several sums of money which shall appear to have been paid by them on such rate, either in whole or in part, more than they ought to have paid, shall be repaid or allowed to them in the next rate or rates which shall be made in pursuance of this act, as if the same had been paid on such new rate or rates; any thing in any former act, or any law, usage or custom to the contrary thereof in any wise notwithstanding.

No action against persons collecting on rate discharged by *Certiorari*, &c.

but the persons over rated to be relieved.

Such collec-  
tors obliged  
to payment.

*Sect. 19.* " Provided nevertheless, and it is hereby further enacted, That all and every such person and persons so employed or to be employed, shall account for and pay over the money by them respectively received, in the same manner, and under the like penalties for any neglect or refusal therein, as are to be inflicted by virtue of this act on any person or persons neglecting or refusing to account for or pay over any money remaining in his or their hands, which he or they have received in pursuance hereof; any thing in any of the said recited acts contained to the contrary thereof in any wise notwithstanding.

Justices of  
Middlesex to  
have the same  
power at their  
general as at  
their quarter-  
sessions.

*Sect. 20.* " And be it further enacted by the authority aforesaid, That the justices of the peace for the said county of *Middlesex* at their general sessions of the peace to be holden for the said county shall have the same powers and authorities to put this act in execution, as are hereby given them at their general quarter-sessions; any thing in this, or any former act, or any law, usage or custom to the contrary notwithstanding.

Writ of Cer-  
tiorari what  
terms issuable.

*Sect. 21.* " And be it further enacted by the authority aforesaid, That no writ of *Certiorari*, to remove any rates made in pursuance of this act, or to remove any orders or other proceedings taken or made by the said respective general or quarter-sessions touching such rates, shall be taken out or granted, but upon a motion to be made some time in the first week of the next term after the time for appealing from such rates or orders is expired; and upon making it appear to the court by affidavit or otherwise, that the merits of the question upon such appeal or orders will by such removal come properly in the judgment of the said court; and that no such writ of *Certiorari* shall be allowed until sufficient security be given to the respective treasurer or treasurers appointed by virtue of this act, in the sum of one hundred pounds, to prosecute such writ of *Certiorari* with effect, and to pay the costs to be ascertained by the court to which such rates, orders, or proceedings shall be removed, in case such rates or orders shall be confirmed; nor shall any such rates, orders or proceedings be quashed or vacated for want of form only; and all charges attending such removal shall be defrayed out of that or any subsequent rate.

Part of the acts  
14 & 43 Eliz.  
and 19 Car. 2.  
repealed.

*Secl. 22.* " And be it further enacted by the authority aforesaid, That so much of the before recited act passed in the fourteenth year of the reign of queen *Elizabeth*, as relates to the method of taxing parishes for the relief of prisoners; and so much of the said act of the forty-third year of the same reign as relates to the method of raising money for the *King's Bench* and *Marshalsea* prisons, hospital and alms-houses; and so much of the said act of the nineteenth year of the reign of king *Charles* the Second, as relates to the method of rating parishes for providing materials for the setting poor prisoners on work, shall be repealed, and be absolutely null and void.

Manner of the  
payment of the  
King's Bench  
and Marshal-  
sea money.  
1 Geo. 2. c. 19

*Secl. 23.* " Provided nevertheless, That such sums as have been annually paid to the *King's Bench* and *Marshalsea* prisons, shall be paid out of the monies arising by virtue of this act, at such times, and in such manner, as is prescribed in and by an act passed in the eleventh year of the reign

of the reign of his present majesty, intituled, *An act for the more effectual securing the payments of certain sums of money, directed by an act made in the forty-third year of the reign of queen Elizabeth, intituled, An act for the relief of the poor, to be paid by the respective treasurers of every county of England and Wales, for the relief of the poor prisoners of the King's Bench and Marshalsea prisons*; and such money as shall be judged necessary by the justices of the peace in sessions to be applied in pursuance of the said act of the fourteenth year of the reign of queen *Elizabeth*, for the relief of prisoners; and of the said act of the nineteenth year of the reign of king *Charles* the Second, for providing materials for the setting poor prisoners on work, shall be paid out of the monies arising by this act.

*Secl. 24.* "And be it further enacted by the authority aforesaid, That Limitation of if any action or suit shall be commenced against any person or persons for action. any thing that shall be done in pursuance or by the authority of this present act, in every such case the action or suit shall be commenced within three months next after the fact committed, and not afterwards, and shall be laid and brought in the respective county in which the cause of action or suit shall arise, and not elsewhere; and the defendant or defendants in such action or suit to be brought shall and may plead the general General issue. issue, and give this act and the special matter in evidence at any trial to be had thereupon; and that the same was done in pursuance and by the authority of this act; and if it shall appear so to be done, or that such action or actions shall be brought after the time before limited for bringing the same as aforesaid, or shall be brought in any other county or place; that then the jury shall find for the defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall be nonsuited, or discontinue his, her or their actions or suit, after the defendant or defendants hath or have appeared; or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall and may recover treble costs, and have the like remedy for the same, as any Treble costs. defendant or defendants hath or have in other cases by law."

*Stat. 13 Geo. 2. c. 18. [A. D. 1740.]* made, among other purposes, "for extending the powers and authorities of justices of the peace of counties touching county-rates, to the justices of the peace of such liberties and franchises as have commissions of the peace within themselves."

*Secl. 7.* "And whereas by an act passed in the twelfth year of his pre- 12 Geo. 2. sent majesty's reign, intituled, *An act for the more easy assising, collecting* c. 29. *and levying of county-rates*, several powers and authorities are given to the justices of the peace in that part of *Great Britain* called *England*, within the respective limits of their commissions, at their general or quarter-sessions, from time to time to make one general rate or assessment for such sum or sums of money, as they in their discretion shall think sufficient to answer all and every the ends and purposes of the several acts therein recited; but there being a proviso in the said act, that the same, or any thing therein contained, should not extend, or be construed to extend, to

Justices of  
peace for li-  
berties to act  
with the same  
power as ju-  
stices for the  
county, in  
collecting  
county-rates.

make any persons, liberties, divisions or places liable to pay to any rate, to be made in pursuance of the said act, to which such person, liberty, division or place did not, or was not liable to contribute before the passing thereof; some doubts have arisen whether the said act doth extend to liberties and franchises, which are not within the jurisdiction of the commissions of the peace for the counties in which such liberties and franchises lie, and so never did nor were liable to contribute to the said county-rates; To the end therefore that such liberties and franchises may not be wholly deprived of the benefit of the said in part recited act, it is hereby declared and enacted by the authority aforesaid, That where any liberties or franchises within that part of *Great Britain* called *England*, have commissions of the peace within themselves, and are not subject to the jurisdiction of the commissions of the peace for the counties in which such liberties or franchises lie, and do not, nor did, before the making the said in part recited act, contribute or pay to the several rates made for the said counties; it shall and may be lawful to and for the justices of the peace of such liberties and franchises, within the respective limits of their commissions, to have, use and exercise all and singular the powers, authorities and methods given or prescribed by the said in part recited act, and all such liberties and franchises are hereby declared to be subject thereto, in the same manner to all intents and purposes, as counties at large are; any thing in the said in part recited act contained, or any law, usage or custom to the contrary thereof in any wise notwithstanding."

## Demurrer.

**A** *Demurrer* is when the criminal joins issue upon a point of law in an indictment, allowing the fact to be true, as laid in the indictment, or appeal. If the indictment, or appeal, proves to be good in law, in the opinion of the judges, they proceed to judgment and execution, as if the party had been convicted by confession or verdict. For he shall not be put under the *Pain fort & dure*, though by his demurrer he refuses to put himself upon the inquest according to the letter; yet he is out of the reason of the law, because a demurrer is allowed to be tried by the judges, and not by the inquest. *Wood's Inst. b. 4. c. 5. cites S. P. C. 150. 2 Inst. 178. H. P. C. 243.*

In criminal cases not capital, if the defendant demur to an indictment, the court will not give judgment against him to answer over, but final judgment. *2 Hawk. 334.*

But

But regularly, in all cases of felony, where a man pleads a special matter, though he conclude his plea with Not guilty to the felony, or do not conclude it so; yet if his plea be tried, or found, or ruled against him, he shall be put to his plea of Not guilty, and be tried for the felony; for though a man shall lose his land in some cases, for mispleading, yet he shall not lose his life for mispleading. 2 H. H. 257.

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## Deodand.

**D**EODAND, (*deodandum*) is a thing given, or rather forfeited, as it were, to God, for the pacification of his wrath, in case of misadventure, whereby any Christian man cometh to a violent end, without the fault of any reasonable creature. For example; If a horse should strike his keeper, and so kill him: If a man in driving a cart, and seeking to redress any thing about it, should so fall as the cart-wheel running over him, should kill him: If one should be felling a tree, and he give warning to the company present, when the tree was near falling, to look to themselves, and any of them should be slain nevertheless by the fall of the tree: In the first of these cases, the horse; in the second, the cart-wheel, cart and horses; and in the third, the tree, is a *deodand*, and to be given to God; that is, to be sold and distributed to the poor, by the king's almoner, for an expiation of that dreadful event, though effected by unreasonable, yea senseless and inanimate creatures. *Staundf. pl. cor. lib. 1. cap. 2. Bract. lib. 3. tract. 2. cap. 5. Britton, cap. 17. and Westm. Symbol. tit. Indictments, sect. 49.*

*Fleta* says, this *deodand* is to be sold, and the price distributed to the poor, for the soul of the king, his ancestors, and all faithful people departed this life. *Lib. 1. cap. 25. De submersis*; which law seems to bear an imitation of that in *Exodus, cap. 21. Si cornu petierit bos virum vel mulierem, ita ut moriatur, lapidabitur bos, neque comedetur caro ejus, ac Dominus ejus erit innocens.* This word is mentioned in the stat. *De officio coronatoris, anno 4 Ed. 1.* See 3 part. *Inst. fol. 57.* Since therefore by the *Mosaical* law the ox was to be stoned to death, it seems reasonable that the price of the ox should be bestowed in pious and charitable uses. *Cowell, edit. 1727.*

A *deodand* is that instrument which occasions the death of a man, and is forfeited to the king, in order to be disposed in pious uses by the king's almoner; this forfeiture of whatever procures the death of a man without the default of another was introduced to increase the terror and abhorrence of murder, so that nothing that occasioned it should seem to go unpunished;

ed; also that weapon or instrument, whereby one man kills another, is called a deodand. 3 *Inst.* 57, 58. 5 *Co.* 110. *H. P. C.* 34. *Pult.* 125. *Crom.* 31. a.

To understand what things are forfeited as deodands, we must observe that it is laid down as a rule, that *omnia que movent ad mortem sunt deodanda*; and therefore that wherever the thing which is the occasion of a man's death is in motion at the time, not only that part thereof which immediately wounds him, but all things which move together with it, and help to make the wound more dangerous, are forfeited also. 1 *Hawk. P. C.* 66, 67.

As where a cart meeting a waggon loaded upon the road, and the cart endeavouring to pass by the waggon, was driven upon a high bank, and overturned, and threw the person that was in the cart just before the wheels of the waggon, and the waggon run over the man and killed him, it was held that the cart, waggon, loading, and all the horses were deodands, because they all moved *ad mortem*. 1 *Salk.* 220.

But if a man, riding on the shafts of a waggon, fall to the ground, and break his neck, the horses and waggon only are forfeited, but not the loading, because it no way contributed to his death. 3 *Inst.* 58. *S. P. C.* 20. 1 *Hawk. P. C.* 66.

So where a thing not in motion causes a man's death, that part thereof only which is the immediate cause is forfeited; as where one climbing upon the wheel of a cart while it stands still falls from it, and dies of the fall, the wheel only is forfeited; but if he had been killed by a bruise from one of the wheels being in motion, the loading also would have been forfeited, because the weight thereof made the hurt the greater. 1 *Hawk. P. C.* 66.

Also if a man riding on a horse over a river is drowned through the violence of the stream, the horse is not forfeited; because not that, but the water, caused his death. *Cro. Jac.* 483. 2 *Roll. Rep.* 23. *Poph.* 156. It is otherwise if the horse had thrown him. 1 *Salk.* 220.

By the opinion of our authors, things fixed to a freehold, as the wheel of a mill, a bell hanging in a steeple, &c. may be deodands; but by the later resolutions they cannot, unless they were severed before the accident happened. 1 *Hawk. P. C.* 66.

Also it was formerly held, that this forfeiture did not extend to casual deaths arising from the indiscretion of children or infants within the age of discretion, for that such punishment of innocent owners by taking their goods would answer no good end of justice: besides, the misfortune in this case might seem rather owing to the indiscretion of the infant than any default in the thing; but this distinction has not been allowed of late; for the law does not ground the forfeiture on any default in the things forfeited, since it extends to things without life, to which it is plain that no manner of fault can be imputed. 1 *Hawk. P. C.* 66.

The forfeiture takes place at land only, and doth not extend to the seas, that are continually liable to storms and tempests; and therefore a ship

ship in salt water, whether in the open sea, or within the body of a county, from which a man falls and is drowned, is not forfeited.

But a ship, by a fall from which a man is drowned in the fresh water, shall be forfeited; but not the merchandize therein, because they no way contributed to his death. 1 *Hawk. P. C.* 66.

In all these cases, if the party wounded die not of his wounds, within a year and a day after he received it, there shall be nothing forfeited; for the law does not look on such as the cause of a man's death, after which he lives so long; but if the party die within that time, the forfeiture shall have relation to the wound given, and cannot be saved by alienation, or other act whatsoever in the mean time. 1 *Hawk. P. C.* 67.

However, nothing can be forfeited as a deodand, nor seized as such, till it be found by the coroner's inquest to have caused a man's death; but after such inquisition the sheriff is answerable for the value of it, and may levy the same on the town where it fell; and therefore the inquest ought to find the value. 1 *Hawk. P. C.* 67.

I have nothing to add, says Mr. Justice *Foster*, to what other writers have said touching deodands, more than to observe, that as this forfeiture seemeth to have been originally founded rather in the superstition of an age of extreme ignorance than in the principles of sound reason and true policy, it hath not of late years met with great countenance in *Westminster-hall*. And where judges have taken upon them to use a judgment of discretion, not strictly within their province, for reducing the *quantum* of the forfeiture, (1 with the temptation to it was taken out of their way) the court of *King's Bench* hath refused to interpose in favour of the crown or lord of the franchise. It hath frequently interposed its authority as sovereign coroner in this case, and also in the case of suicide, *in favour of the subject, and to save the forfeiture*, but will not do it in either case *to his prejudice*. And herein it proceedeth upon the same principle of equitable justice, that the courts of *Westminster-hall* constantly do in refusing to set aside a wrong verdict given in favour of the defendant in a criminal case, or in an hard action, though it is done every day where a wrong verdict goeth against him. In the case of the *King* and *Rolfe* coroner of *Kent*, which came on in *Mich. and Hill.* the fifth of king *George 2.* the coroner's inquest found, that *A. B.* sitting on his waggon, accidentally fell to the ground; and that the horses drawing the waggon forward, one of the four wheels crushed his head, of which he instantly died; and then concluded that the wheel, on which they set a small value, *only* moved to his death. A motion was made in behalf of Mr. *Mompesson*, lord of the franchise, for quashing this inquisition, upon affidavits tending to shew that the cart and horses were equally instrumental; which indeed the finding of the jury did sufficiently imply. But the court was very clear that neither this court nor the coroner can oblige the jury to conclude otherwise than they have done, and would not suffer the affidavit for quashing the inquisition to be read. A like case came on in *Mich.* the 29th of king *George 2.* *The King* against *Drew*, coroner of *Middlesex*. The



## Deodand.

coroner's jury, upon view of the body of a person killed by the like accident, found that one wheel of the waggon *only* moved to the death. The court, on motion in behalf of the lord of the franchise, granted a rule for shewing cause, why the inquisition should not be quashed for this misbehaviour of the jury. On the day for shewing cause, Mr. *Hume Campbell*, counsel for the lord of the franchise, informed the court, that upon looking into precedents he was satisfied he could not support the rule, and thereupon it was discharged. The case of *The King and Rolfe* was mentioned on this occasion, and greatly relied on. *Fost. Rep.* 265.

The community, says Mr. Justice *Foster*, was supposed to have an interest, as it really had, in the life of every member. And therefore the king, as *caput reipublicæ*, might exact a certain mulct or fine in cases of homicide, though merely casual. Upon this principle deodands became due; the weapon with which the party was slain by another was a deodand. Irrational creatures, and even inanimate beings, which without the intervention of human means contributed to the death, were deodands, and are so to this day. And upon the same principle the crown shared with the family in the amerciament called *murdrum*; which was an amerciament anciently exacted from the township where a person was privately murdered, and the murderer not apprehended; or the dead body of an unknown person appearing to have been murdered happened to be found. *Fost. Rep.* 287, 281.

## Dissenters.

STAT. 1 *Will. & Mar. c.* 18. [*A. D.* 1688. *Intituled*] “An act for exempting their majesties protestant subjects, dissenting from the church of *England*, from the penalties of certain laws.”

“Forasmuch as some ease to scrupulous consciences in the exercise of religion may be an effectual means to unite their majesties protestant subjects in interest and affection;

The several laws against dissenters repealed.

23 *Eliz. c.* 1.

29 *Eliz. c.* 6.

*Sect. 2.* “Be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That neither the statute made in the three and twentieth year of the reign of the late queen *Elizabeth*, intituled, *An act to retain the queen's majesty's subjects in their due obedience*; nor the statute made in the twenty-ninth year of the said queen, intituled, *An act for the*

more

*more speedy and due execution of certain branches of the statute made in the threë and twentieth year of the queen's majesty's reign, viz. the aforesaid act; nor that branch or clause of a statute made in the first year of the reign of the said queen, intituled, An act for the uniformity of common prayer and service in the church, and administration of the sacraments; whereby all persons, having no lawful or reasonable excuse to be absent, are required to resort to their parish-church or chapel, or some usual place where the common prayer shall be used; upon pain of punishment by the censures of the church, and also upon pain that every person so offending shall forfeit for every such offence twelve pence; nor the statute made in the third year of the reign of the late king James the First, intituled, An act for the better discovering and repressing popish recusants; nor that other statute made in the same year, intituled, An act to prevent and avoid dangers which may grow by popish recusants; nor any other law or statute of this realm made against papists or recusants, except the statute made in the five and twentieth year of king Charles the Second, intituled, An act for preventing dangers which may happen from popish recusants; and except also the statute made in the thirtieth year of the said king Charles the second, intituled, An act for the more effectual preserving the king's person and government by disabling papists from sitting in either house of parliament; shall be construed to extend to any person or persons dissenting from the church of England, that shall take the oaths mentioned in a statute made this present parliament, intituled, An act for removing and preventing all questions and disputes concerning the assembling and sitting of this present parliament; and shall make and subscribe the declaration mentioned in a statute made in the thirtieth year of the reign of king Charles the Second, intituled, An act to prevent papists from sitting in either house of parliament; which oaths and declaration the justices of peace at the general sessions of the peace to be held for the county or place where such person shall live, are hereby required to tender and administer to such persons as shall offer themselves to take, make and subscribe the same, and thereof to keep a register: And likewise none of the persons aforesaid shall give or pay, as any fee or reward, to any officer or officers belonging to the court aforesaid, above the sum of sixpence, nor that more than once for his or their entry of his taking the said oaths, and making and subscribing the said declaration; nor above the further sum of six pence for any certificate of the same to be made out and signed by the officer or officers of the said court.*

1 Eliz. c. 2.  
s. 14.

3 Jac. 1. c. 4.

3 Jac 1. c. 5:

Exception,  
25 Car. 2. c. 2.

30 Car. 2.  
stat. 2. c. 1.

30 Car. 2.  
stat. 2. c. 1:

Taking declaration to be  
registered.

Fee for register  
and certificate.

*Sect. 3. " And be it further enacted by the authority aforesaid, That all and every person and persons already convicted or prosecuted in order to conviction or recusancy, by indictment, information, action of debt, or otherwise, grounded upon the aforesaid statutes, or any of them, that shall take the said oaths mentioned in the said statute made this present parliament, and make and subscribe the declaration aforesaid, in the court of exchequer, or assizes or general or quarter-sessions to be held for the county where such person lives, and to be thence respectively certified into the exchequer, shall be thenceforth exempted and discharged from all the*

Persons convicted, &c.  
taking the  
oaths, &c. shall  
be discharged.

the

the penalties, seizures, forfeitures, judgments and executions incurred by force of any of the aforesaid statutes, without any composition, fee or further charge whatsoever."

35 Eliz. c. 1.  
22 Car. 2. c. 1.  
Ecclesiastical court.  
Sect. 4. "And be it further enacted by the authority aforesaid, That all and every person and persons that shall, as aforesaid, take the said oaths, and make and subscribe the declaration aforesaid, shall not be liable to any pains, penalties or forfeitures, mentioned in an act made in the five and thirtieth year of the reign of the late queen *Elizabeth*, intituled, *An act to retain the queen's majesty's subjects in their due obedience*; nor in an act made in the two and twentieth year of the reign of the late king *Charles* the Second, intituled, *An act to prevent and suppress seditious conventicles*; nor shall any of the said persons be prosecuted in any ecclesiastical court, for or by reason of their non-conforming to the church of *England*.

Private meeting excluded.  
Sect. 5. "Provided always, and be it enacted by the authority aforesaid, That if any assembly of persons dissenting from the church of *England*, shall be had in any place for religious worship with the doors locked, barred or bolted during any time of such meeting together, all and every person or persons that shall come to and be at such meeting, shall not receive any benefit from this law, but be liable to all the pains and penalties of all the aforesaid laws recited in this act, for such their meeting, notwithstanding his taking the oaths, and his making and subscribing the declaration aforesaid.

Tithes saved.  
Sect. 6. "Provided always, That nothing herein contained shall be construed to exempt any of the persons aforesaid from paying of tithes or other parochial duties, or any other duties to the church or minister, nor from any prosecution in any ecclesiastical court, or elsewhere, for the same.

Officers scrupling oaths, &c. allowed to act by deputy.  
Sect. 7. "And be it further enacted by the authority aforesaid, That if any person dissenting from the church of *England*, as aforesaid, shall hereafter be chosen or otherwise appointed to bear the office of high constable or petit constable, churchwarden, overseer of the poor, or any other parochial or ward office, and such person shall scruple to take upon him any of the said offices in regard of the oaths, or any other matter or thing required by the law to be taken or done in respect of such office, every such person shall and may execute such office or employment by a sufficient deputy, by him to be provided, that shall comply with the laws on this behalf. Provided always, the said deputy be allowed and approved by such person or persons, in such manner as such officer or officers respectively should by law have been allowed and approved.

Persons in orders how exempted from  
17 Car. 2 c. 2.  
§ 3 & 14 Car. 2 c. 4.  
Sect. 8. "And be it further enacted by the authority aforesaid, That no person dissenting from the church of *England* in holy orders, or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation of dissenting protestants, that shall make and subscribe the declaration aforesaid, and take the said oaths at the general or quarter-sessions of the peace to be held for the county, town, parts or division where such person lives; which court is hereby empowered to administer

administer the same, and shall also declare his approbation of and subscribe the articles of religion mentioned in the statute made in the thirteenth year 13 Eliz. c. 13. of the reign of the late queen *Elizabeth*, except the thirty-fourth, thirty-fifth, and thirty-sixth, and these words of the twentieth article, viz. [*the church hath power to decree rites or ceremonies, and authority in controversies of faith, and yet*] shall be liable to any of the pains or penalties mentioned in an act made in the seventeenth year of the reign of king *Charles* 17 Car. 2. c. 2. the Second, intituled, *An act for restraining non-conformists from inhabiting in corporations*; nor the penalties mentioned in the aforesaid act made in the two and twentieth year of his late majesty's reign, for or by reason of such persons preaching at any meeting for the exercise of religion; nor to the penalty of one hundred pounds mentioned in an act made in the thirteenth and fourteenth of king *Charles* the Second, intituled, *An act 13 & 14 Car. 2. for the uniformity of publick prayers and administration of sacraments, and other c. 4. rites and ceremonies: and for establishing the form of making, ordaining and consecrating of bishops, priests and deacons, in the church of England, for officiating in any congregation for the exercise of religion permitted and allowed by this act.*

*Sett. 9.* “ Provided always, That the making and subscribing the said declaration, and the taking the said oaths, and making the declaration of approbation and subscription to the said articles, in manner as aforesaid, by every respective person or persons herein before-mentioned, at such general or quarter-sessions of the peace, as aforesaid, shall be then and there entered of record in the said court, for which six-pence shall be paid to the clerk of the peace, and no more: Provided that such person shall not at any time preach in any place, but with the doors not locked, barred or bolted, as aforesaid. Taking the oaths, &c. to be registered.

*Sett. 10.* “ And whereas some dissenting protestants scruple the baptizing of infants; Be it enacted by the authority aforesaid, That every person in pretended holy orders, or pretending to holy orders, or preacher or teacher that shall subscribe the aforesaid articles of religion, except before excepted, and also except part of the seven and twentieth article touching infant baptism, and shall take the said oaths, and make and subscribe the declaration aforesaid, in manner aforesaid, every such person shall enjoy all the privileges, benefits and advantages, which any other dissenting minister, as aforesaid, might have or enjoy by virtue of this act. Meeting door to be unlocked. Anabaptists.

*Sett. 11.* “ And be it further enacted by the authority aforesaid, That every teacher or preacher in holy orders, or pretended holy orders, that is a minister, preacher or teacher of a congregation, that shall take the oaths herein required, and make and subscribe the declaration aforesaid, and also subscribe such of the aforesaid articles of the church of *England*, as are required by this act in manner aforesaid, shall be thenceforth exempted from serving upon any jury, or from being chosen or appointed to bear the office of church-warden, overseer of the poor, or any other parochial or ward office, or other office in any hundred of any shire, city, town, parish, division or wapentake. Teachers exempt from offices.

Justice of  
peace may ten-  
der the oaths,  
&c.

Penalty for  
refusing.

*Sect. 12.* " And be it further enacted by the authority aforesaid, That every justice of the peace may at any time hereafter require any person, that goes to any meeting for exercise of religion, to make and subscribe the declaration aforesaid, and also to take the oaths or declaration of fidelity herein after mentioned, in case such person scruples the taking of an oath; and upon refusal thereof, such justice of the peace is hereby required to commit such person to prison without bail or mainprize, and to certify the name of such person to the next general or quarter-sessions of the peace to be held for that county, city, town, part or division where such person then resides; and if such person so committed shall, upon a second tender at the general or quarter-sessions, refuse to make and subscribe the declaration aforesaid, such person refusing shall be then and there recorded, and he shall be taken thenceforth to all intents and purposes for a popish recusant convict, and suffer accordingly, and incur all the penalties and forfeitures of all the aforesaid laws.

Quakers how  
exempted.  
Altered as to  
quakers by  
5 Geo. 1. c. 6.

*Sect. 13.* " And whereas there are certain other persons, dissenters from the church of *England*, who scruple the taking of any oath; Be it enacted by the authority aforesaid, That every such person shall make and subscribe the aforesaid declaration, and also this declaration of fidelity following, *viz.*

Declaration of  
fidelity.

" I *A. B.* do sincerely promise and solemnly declare before God and the world, that I will be true and faithful to king *William* and queen *Mary*; and I do solemnly profess and declare, that I do from my heart abhor, detest and renounce, as impious and heretical, that damnable doctrine and position, *That princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever.* And I do declare, that no foreign prince, person, prelate, state or potentate, hath or ought to have, any power, jurisdiction, superiority, pre-eminence or authority ecclesiastical or spiritual within this realm."

And shall subscribe a profession of their Christian belief in these words:

Profession.

" I *A. B.* profess faith in God the Father, and in Jesus Christ his eternal Son, the true God, and in the Holy Spirit, one God blessed for evermore; and do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration."

5 Eliz. c. 1.

Which declarations and subscription shall be made and entered of record at the general quarter-sessions of the peace for the county, city or place where every such person shall then reside. And every such person that shall make and subscribe the two declarations and profession aforesaid, being thereunto required, shall be exempted from all the pains and penalties of all and every the afore-mentioned statutes made against popish recusants or protestant nonconformists; and also from the penalties of an act made in the fifth year of the reign of the late queen *Elizabeth*, intituled, *An act for the assurance of the queen's royal power*

2007

over all estates and subjects within her dominions, for or by reason of such persons not taking or refusing to take the oath mentioned in the said act; and also from the penalties of an act made in the thirteenth and <sup>13 & 14 Car. 2.</sup> fourteenth years of the reign of king Charles the Second, intituled, *An act for preventing mischiefs that may arise by certain persons called Quakers, refusing to take lawful oaths*; and enjoy all other the benefits, privileges and advantages under the like limitations, provisoes and conditions, which any other dissenters should or ought to enjoy by virtue of this act.

*Sect. 14.* “ Provided always, and be it enacted by the authority aforesaid, That in case any person shall refuse to take the said oaths, when <sup>How purged after refusal of the oaths!</sup> tendered to them, which every justice of the peace is hereby impowered to do, such person shall not be admitted to make and subscribe the two declarations aforesaid, though required thereunto either before any justice of the peace, or at the general or quarter-sessions before or after any conviction of popish recusancy, as aforesaid, unless such person can, within thirty-one days after such tender of the declarations to him, produce two sufficient protestant witnesses, to testify upon oath that they believe him to be a protestant dissenter; or a certificate under the hands of four protestants, who are conformable to the church of *England*, or have taken the oaths and subscribed the declaration above-mentioned, and shall also produce a certificate, under the hands and seals of six or more sufficient men of the congregation to which he belongs, owning him for one of them.

*Sect. 15.* “ Provided also, and be it enacted by the authority aforesaid, That until such certificate under the hands of six of his congregation, as aforesaid, be produced, and two protestant witnesses come to attest his being a protestant dissenter, or a certificate under the hands of four protestants, as aforesaid, be produced, the justice of the peace shall and hereby is required to take a recognizance with two sureties in the penal sum of fifty pounds, to be levied of his goods and chattels, lands and tenements, to the use of the king’s and queen’s majesties, their heirs and successors, for his producing the same; and if he cannot give such security, to commit him to prison, there to remain until he has produced such certificates, or two witnesses, as aforesaid.

*Sect. 16.* “ Provided always, and it is the true intent and meaning of this act, That all the laws made and provided for the frequenting of <sup>Laws for divine service in force.</sup> divine service on the Lord’s day, commonly called *Sunday*, shall be still in force, and executed against all persons that offend against the said laws, except such persons come to some congregation or assembly of religious worship, allowed or permitted by this act.

*Sect. 17.* “ Provided always, and be it further enacted by the authority aforesaid, That neither this act, nor any clause, article or thing herein contained, shall extend or be construed to extend to give any ease, benefit or advantage to any papist or popish recusant whatsoever, or any person that shall deny in his preaching or writing the doctrine of the Blessed Trinity, as it is declared in the aforesaid articles of religion. <sup>Papists, &c. excepted.</sup>

Disturbers of  
religious wor-  
ship how  
punished.  
See 1 Geo. 1.  
Stat. 2. c. 5. §. 4.

*Sect. 18.* " Provided always, and be it enacted by the authority aforesaid, That if any person or persons, at any time or times after the tenth day of *June*, do, and shall willingly and of purpose, maliciously or contemptuously come into any cathedral or parish church, chapel or other congregation permitted by this act, and disquiet or disturb the same, or misuse any preacher or teacher, such person or persons, upon proof thereof before any justice of peace, by two or more sufficient witnesses, shall find two sureties to be bound by recognizance in the penal sum of fifty pounds, and in default of such sureties shall be committed to prison, there to remain till the next general or quarter-sessions; and upon conviction of the said offence at the said general or quarter-sessions, shall suffer the pain and penalty of twenty pounds, to the use of the king's and queen's majesties, their heirs and successors.

Place for wor-  
ship to be cer-  
tified.

*Sect. 19.* " Provided always, That no congregation or assembly for religious worship shall be permitted or allowed by this act, until the place of such meeting shall be certified to the bishop of the diocese, or to the archdeacon of that archdeaconry, or to the justices of the peace at the general or quarter-sessions of the peace for the county city or place in which such meeting shall be held, and registred in the said bishop's or archdeacon's court respectively, or recorded at the said general or quarter-sessions; the register or clerk of the peace whereof respectively is hereby required to register the same, and to give certificate thereof to such person as shall demand the same, for which there shall be no greater fee nor reward taken than the sum of sixpence."

*Stat. 10 Ann. c. 2. [A. D. 1711.] made, among other purposes,* " for confirming the toleration granted to protestant dissenters by an act intituled, *An act for exempting their majesties protestant subjects, dissenting from the church of England, from the penalties of certain laws, and for supplying the defects thereof.*"

If any dissen-  
ter, (not in  
holy orders,  
&c.)  
who would  
have been en-  
titled to the  
benefit of that  
act, if he had  
taken the  
oaths, &c.  
is or shall be  
prosecuted up-  
on any penal  
statute, &c.  
shall, during  
such prosecu-  
tion take the  
oaths, &c. or

*Sect. 8.* " And for the rendering the said last mentioned act more effectual according to the true intent and meaning thereof; Be it further enacted and declared by the authority aforesaid, That if any person dissenting from the church of *England*, (not in holy orders or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation) who should have been entitled to the benefit of the said last-mentioned act, if such person had duly taken, made and subscribed the oaths and declaration, or otherwise qualified him or herself, as required by the said act, and now is or shall be prosecuted upon or by virtue of any of the penal statutes, from which protestant dissenters are exempted by the said act, shall at any time during such prosecution, take, make and subscribe the said oaths and declaration, or being of the people called *Quakers*, shall make and subscribe the aforesaid declaration, and also the declaration of fidelity, and subscribe the profession of their Christian belief according to the said act, or before any two of her majesty's justices of the peace

peace (who are hereby required to take and return the same to the next quarter-sessions of the peace, to be there recorded) such person shall be, and is hereby entitled to the benefit of the said act, as fully and effectually as if such person had duly qualified himself within the time prescribed by the said act, and shall be thenceforth exempted and discharged from all the penalties and forfeitures incurred by force of any the aforeaid penal statutes.

being a quaker shall make the declaration, &c. he shall be intitled to the benefit of the said act.

*Sect. 9.* " And whereas it is or may be doubted whether a preacher or teacher of any congregation of dissenting protestants, duly in all respects qualified according to the said act, be allowed, by virtue of the said act, to officiate in any congregation in any county, other than that in which he so qualified himself, although in a congregation or place of meeting duly certified and registred as is required by the said act; Be it declared and enacted by the authority aforeaid, That any such preacher or teacher, so duly qualified according to the said act, shall be and is hereby allowed to officiate in any congregation, although the same be not in the county wherein he was so qualified; provided that the said congregation or place of meeting hath been, before such officiating, duly certified and registred or recorded according to the said act: And such preacher or teacher shall, if required, produce a certificate of his having so qualified himself, under the hand of the clerk of the peace for the county or place where he so qualified himself; which certificate such clerk of the peace is hereby required to make; and shall also before any justice of the peace of such county or place where he shall so officiate, make and subscribe such declaration, and take such oaths as are mentioned in the said act, if thereunto required.

A dissenting teacher, qualified according to the said act, may officiate in any other county than where he was qualified.

Such teacher to produce a certificate, &c. of his having qualified himself, &c. and shall if required make the declaration, &c.

## Distress.



## Distress.

**D**ISTRESS is the thing which is taken and distrained upon any land for rent behind, or other duty, or for hurt done, although the property of the thing belongeth to a stranger. *Termes de la ley.*

**Stat. 2 Will. & Mar. sess. 1. c. 5.** [*A. D. 1690. Intituled*] “An act for enabling sale of goods distrained for rent, in case the rent be not paid in a reasonable time.”

“Whereas the most ordinary and ready way for recovery of arrears of rent is by distress; yet such distresses not being to be sold, but only detained as pledges for enforcing the payment of such rent, the persons distraining have little benefit thereby: For the remedying whereof,

‘Goods distrained for rent may be appraised and sold.

Farther provided for by 8 Annæ, c. 14.

*Sect. 2.* “Be it enacted and ordained by the king’s and queen’s most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of *June* in the year of our Lord one thousand six hundred and ninety, that where any goods or chattels shall be distrained for any rent reserved and due upon any demise, lease or contract whatsoever, and the tenant or owner of the goods so distrained shall not within five days next after such distress taken, and notice thereof (with the cause of such taking) left at the chief mansion-house, or other most notorious place on the premises charged with the rent distrained for, replevy the same, with sufficient security to be given to the sheriff, according to law, that then in such case, after such distress and notice as aforesaid, and expiration of the said five days, the person distraining shall and may, with the sheriff or under sheriff of the county, or with the constable of the hundred, parish or place where such distress shall be taken (who are hereby required to be aiding and assisting therein) cause the goods and chattels so distrained to be appraised by two sworn appraisers (whom such sheriff, under-sheriff, or constable, are hereby impowered to swear) to appraise the same truly, according to the best of their understandings; and after such appraisement shall and may lawfully sell the goods and chattels so distrained for the best price can be gotten for the same, towards satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement and sale, leaving the overplus (if any) in the hands of the said sheriff, under-sheriff or constable, for the owner’s use.

Cornloose, &c. may be detained and sold.

*Sect. 3.* “And whereas no sheaves or cocks of corn loose or in the straw, or hay in any barn or granary, or on any hovel, stack or rick, can by the law be distrained, or otherwise secured for rent, whereby landlords are oftentimes couzened and deceived by their tenants, who sell their corn,  
grain

grain and hay, to strangers, and remove the same from the premises chargeable with such rent, and thereby avoid the payment of the same; Be it further enacted by the authority aforesaid, That for remedying the said practice and deceit, it shall and may, from and after the said first day of *June*, be lawful to and for any person or persons having rent arrear and due upon any such demise, lease or contract as aforesaid, to seize and secure any sheaves or cocks of corn, or corn loose or in the straw, or hay lying or being in any barn or granary, or upon any hovel, stack or rick, or otherwise upon any part of the land or pound charged with such rent, and to lock up or detain the same in the place where the same shall be found, for or in the nature of a distress, until the same shall be replevied upon such security to be given as aforesaid; and in default of replevying the same as aforesaid, within the time aforesaid, to sell the same after such appraisement thereof to be made; so as nevertheless such corn, grain or hay so distrained as aforesaid, be not removed by the person or persons distraining, to the damage of the owner thereof, out of the place where the same shall be found and seized, but be kept there (as impounded) until the same shall be replevied, or sold in default of replevying the same within the time aforesaid.

*Sect. 4.* “ And be it further enacted by the authority aforesaid, That upon any pound-breach or rescous of goods or chattels distrained for rent, the person or persons grieved thereby shall, in a special action upon the case for the wrong thereby sustained, recover his and their treble damages and costs of suit against the offender or offenders in any such rescous or pound-breach, any or either of them, or against the owners of the goods distrained, in case the same be afterwards found to have come to his use or possession. Treble damages for pound-breach. <sup>1</sup> Lutw. 213. Carthew 321.

*Sect. 5.* “ Provided always, and be it further enacted, That in case any such distress and sale, as aforesaid, shall be made by virtue or colour of this present act for rent pretended to be arrear and due, where in truth no rent is arrear or due to the person or persons distraining, or to him or them in whose name or names, or right, such distress shall be taken as aforesaid; that then the owner of such goods or chattels distrained and sold as aforesaid, his executors or administrators shall and may, by action of trespass, or upon the case, to be brought against the person or persons so distraining, any or either of them, his or their executors or administrators, recover double of the value of the goods or chattels so distrained and sold, together with full costs of suit. Double damages and costs against wrongful distrainer.

**Stat. 8 Ann. c. 14.** [*A. D. 1709. Intituled*] “ An act for the better security of rents, and to prevent frauds committed by tenants.”

“ For the more easy and effectual recovery of rents reserved on leases for life or lives, term of years, at will, or otherwise; Be it enacted by the queen’s most excellent majesty, by and with the advice and consent of the

2 the

After the first of May 1710, no goods, &c. shall be taken in execution, &c. unless the party before removal of the goods, &c. pay the landlord the rent due.

Provided it amount to no more than one year's rent.

The sheriff, &c. to levy the rent as well as the execution-money.

If after the said first of May, any lessee, &c. shall fraudulently carry off his goods, &c. from the premises, the lessor, &c. may within five days after seize such goods, &c. and sell the same as if they had been distrained on the premises.

Provido, such lessor, &c. shall not seize any goods, &c. which shall be bona fide sold before such seizure.

After the said first of May an action of debt may be brought against tenant

the lords spiritual temporal, and commons in parliament assembled, and by the authority or the same, That from and after the first day of May, which shall be in the year of our Lord one thousand seven hundred and ten, no goods or chattels whatsoever, lying or being in or upon any messuage, lands or tenements, which are or shall be leased for life or lives, term of years, at will or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out, shall before the removal of such goods from off the said premises, by virtue of such execution or extent, pay to the landlord of the said premises, or his bailiff, all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution; Provided the said arrears of rent do not amount to more than one year's rent, and in case the said arrears shall exceed one year's rent, then the said party, at whose suit such execution is sued out, paying the said landlord or his bailiff one year's rent, may proceed to execute his judgment as he might have done before the making of this act; and the sheriff or other officer is hereby impowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution-money.

*Sect. 2.* " And be it further enacted by the authority aforesaid, That in case any lessee for life or lives, term of years, at will or otherwise, of messuages, lands or tenements, upon demise whereof any rents are or shall be reserved or made payable, shall, from and after the said first day of May, fraudulently or clandestinely convey or carry off or from such demised premises his goods or chattels, with intent to prevent the landlord or lessor from distraining the same for arrears of such rent so reserved, as aforesaid, it shall and may be lawful to and for such lessor or landlord, or any person or persons by him for that purpose lawfully impowered, within the space of five days next ensuing such conveying away or carrying off such goods or chattels, as aforesaid, to take and seize such goods and chattels where ever the same shall be found, as a distress for the said arrears of such rent; and the same to sell, or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, in and upon such demised premises for such arrears of rent; any law, custom or usage to the contrary in any wise notwithstanding.

*Sect. 3.* " Provided nevertheless, That nothing in this act contained shall extend, or be construed to extend, to impower such lessor or landlord to take or seize any goods or chattels as a distress for arrears of rent, which shall be sold *bona fide*, and for a valuable consideration, before such seizure made; any thing herein contained to the contrary notwithstanding.

*Sect. 4.* " And whereas no action of debt lies against a tenant for life or lives, for any arrears of rent, during the continuance of such estate for life or lives; Be it enacted by the authority aforesaid, That from and after the said first day of May, it shall and may be lawful for any person or persons, having any rent in arrear, or due upon any lease or demise for life

life or lives, to bring an action or actions of debt for such arrears of rent, in the same manner they might have done in case such rent were due, and reserved upon a lease for years.

*Sect. 5.* " And it is hereby further enacted and declared by the authority aforesaid, That all distresses hereby impowered to be made, as aforesaid, shall be liable to such sales, and in such manner, and the monies arising by sales to be distributed in like manner as by an act made in the second year of the reign of their late majesties king *William* and queen *Mary*, [intituled, *An act for enabling the sale of goods distrained for rent, in case the rent be not paid in reasonable time,*] in that behalf directed and appointed.

*Sect. 6.* " Also whereas tenants *per auter vie* and lessees for years, or at will, frequently hold over the tenements to them demised, after the determination of such leases: And whereas after the determination of such or any other leases, no distress can by law be made for any arrears of rent that grew due on such respective leases before the determination thereof; It is hereby further enacted by the authority aforesaid, That from and after the said first day of *May* one thousand seven hundred and ten, it shall and may be lawful for any person or persons, having any rent in arrear, or due upon any lease for life or lives, or for years, or at will, ended or determined, to distrain for such arrears, after the determination of the said respective leases, in the same manner as they might have done if such lease or leases had not been ended or determined.

*Sect. 7.* " Provided, That such distress be made within the space of six kalendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrear became due.

*Sect. 8.* " Provided always, and it is hereby enacted and declared by the authority aforesaid, That nothing in this act contained shall extend, or be construed to extend to let, hinder or prejudice her majesty, her heirs or successors, in the levying, recovering or seizing any debts, fines, penalties or forfeitures, that are or shall be due, payable or answerable to her majesty, her heirs or successors; but that it shall and may be lawful for her majesty, her heirs and successors, to levy, recover and seize such debts, fines, penalties and forfeitures, in the same manner as if this act had never been made; any thing in this act contained to the contrary thereof in any wise notwithstanding."

for life for rent due upon a lease for life in the same manner as if it were due on a lease for years. Distresses liable to such sales, and to be so distributed, as by the act 2 W. & M. Sess. 1. c. 5. is directed.

Rent in arrear upon a lease for life, &c. expired, may be distrained for after the determination of the said lease, in the same manner as if the lease had not been ended.

Distress to be within six months after the end of the lease, and during the landlord's title and tenant's possession. This act shall not hinder the queen, &c. to levy, &c. any debts, fines, &c. due to the crown.

*Stat. 4 Geo. 2. c. 28. [A. D. 1731. Intituled]* " An act for the more effectual preventing of frauds committed by tenants, and for the more easy recovery of rents, and renewal of leases."

"For securing to lessors and land-owners their just rights, and to prevent frauds frequently committed by tenants; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual

Persons hold-  
ing over lands,  
&c. after ex-  
piration of  
leases, to pay  
double the  
yearly value.

and temporal, and commons, in this present parliament assembled, and by the authority of the same, That in case any tenant or tenants for any term of life, lives or years, or other person or persons, who are or shall come into possession of any lands, tenements or hereditaments, by, from or under, or by collusion with such tenant or tenants, shall wilfully hold over any lands, tenements or hereditaments, after the determination of such term or terms; and after demand made, and notice in writing given, for delivering the possession thereof, by his or their landlords or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements or hereditaments shall belong, his or their agent or agents thereunto lawfully authorized; then, and in such case, such person or persons so holding over, shall, for and during the time he, she and they shall so hold over, or keep the person or persons intitled, out of possession of the said lands, tenements and hereditaments, as aforesaid, pay to the person or persons so kept out of possession, their executors, administrators or assigns, at the rate of double the yearly value of the lands, tenements and hereditaments so detained, for so long time as the same are detained, to be recovered in any of his majesty's courts of record, by action of debt, whereunto the defendant or defendants shall be obliged to give special bail, against the recovering of which said penalty there shall be no relief in equity.

*Stat. 2.* " And whereas great inconveniencies do frequently happen to lessors and landlords, in cases of re-entry for non-payment of rent, by reason of the many niceties that attend re-entries at common law; and forasmuch as when a legal re-entry is made, the landlord or lessor must be at the expence, charge and delay of recovering in ejectment, before he can obtain the actual possession of the demised premises; and it often happens that after such a re-entry made, the lessee or his assignee, upon one or more bills filed in a court of equity, not only holds out the lessor or landlord, by an injunction, from recovering the possession, but likewise pending the said suit, do run much more in arrear, without giving any security for the rents due, when the said re-entry was made, or which shall or do afterwards incur: For remedy whereof, Be it enacted by the authority aforesaid, That in all cases between landlord and tenant, from and after the twenty-fourth day of *June* one thousand seven hundred and thirty-one, as often as it shall happen that one half year's rent shall be in arrear, and the landlord or lessor to whom the same is due hath right by law to re-enter for the non-payment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a declaration in ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then to affix the same upon the door of any demised messuage; or in case such ejectment shall not be for the recovery of any messuage, then upon some notorick place of the lands, tenements or hereditaments, comprized in such declaration in ejectment, and such affixing shall be deemed legal service thereof; which service, or affixing such declaration in  
eject-

On half a  
year's rent in  
arrear, land-  
lord may re-  
enter, serving  
a declaration  
of ejectment.

ejectment, shall stand in the place and stead of a demand and re-entry ; and in case of judgment against the casual ejector or nonsuit for not confessing lease, entry and *ouster*, it shall be made appear to the court where the said suit is depending, by affidavit, or be proved upon the trial, in case the defendant appears, that half a year's rent was due before the said declaration was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor or lessors in ejectment had power to re-enter ; then, and in every such case, the lessor or lessors in ejectment shall recover judgment and execution, in the same manner as if the rent in arrear had been legally demanded, and a re-entry made ; and in case the lessee or lessees, his, her or their assignee or assignees, or other person or persons claiming or deriving under the said leases, shall permit and suffer judgment to be had and recovered on such ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without filing any bill or bills for relief in equity, within six calendar months after such execution executed ; then, and in such case, the said lessee or lessees, his, her or their assignee or assignees, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, other than by writ of error, for reversal of such judgment, in case the same shall be erroneous ; and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease ; and if on such ejectment verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited therein, except for the defendant or defendants not confessing lease, entry, and *ouster* ; then in every such case such defendant or defendants shall have and recover his, her and their full costs : Provided always, That nothing herein contained shall extend to bar the right of any mortgagee or mortgagees of such lease, or any part thereof, who shall not be in possession, so as such mortgagee or mortgagees shall and do, within six calendar months after such judgment obtained, and execution executed, pay all rent in arrear, and all costs and damages sustained by such lessor, person or persons intitled to the remainder or reversion, as aforesaid, and perform all the covenants and agreements, which on the part and behalf of the first lessee or lessees are and ought to be performed.

When lessor in ejectment may recover judgment, &c.

Not to bar the right of any mortgagee.

Sect. 3. " And be it further enacted by the authority aforesaid, That in case the said lessee or lessees, his, her or their assignee or assignees, or other person or persons claiming any right, title or interest, in law or equity, of, in or to the said lease, shall, within the time aforesaid, file one or more bill or bills, for relief in any court of equity, such person or persons shall not have or continue any injunction, against the proceedings at law on such ejectment, unless he, she or they do or shall, within forty days next after a full and perfect answer shall be filed by the lessor or lessors of the plaintiff in such ejectment, bring into court, and lodge with the proper officer such sum and sums of money as the lessor or lessors of

Lessees filing bill in equity, not to have an injunction against proceeding at law, &c.

the plaintiff in the said ejectment shall, in his, her or their answer, swear to be due and in arrear, over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord, on good security, subject to the decree of the court; and in case such bill or bills shall be filed within the time aforesaid; and after execution is executed, the lessor or lessors of the plaintiff shall be accountable only for so much, and no more, as he, she or they shall really and *bona fide*, without fraud, deceit or wilful neglect, make of the demised premises, from the time of his, her or their entering into the actual possession thereof; and if what shall be so made by the lessor or lessors of the plaintiff, happen to be less than the rent reserved on the said lease, then the said lessee or lessees, his, her or their assignee or assignees, before he, she or they shall be restored to his, her or their possession or possessions, shall pay such lessor or lessors, or landlord or landlords, what the money so by them made, fell short of the reserved rent, for the time such lessor or lessors of the plaintiff, landlord or landlords, held the said lands.

Tenant paying all rent with costs, proceedings to cease.

*SECT. 4.* " Provided always, and be it further enacted by the authority aforesaid, That if the tenant or tenants, his, her or their assignee or assignees, do or shall, at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his, her or their attorney in that cause, or pay into the court where the same cause is depending, all the rent and arrears, together with the costs; then, and in such case, all further proceedings on the said ejectment shall cease and be discontinued; and if such lessee or lessees, his, her or their executors, administrators or assigns, shall, upon such bill filed as aforesaid, be relieved in equity, he, she and they shall have, hold, and enjoy the demised lands, according to the lease thereof made, without any new lease to be thereof made to him, her or them.

Method of recovering seck rents, &c.

*SECT. 5.* " And whereas the remedy for recovering rents, seck rents of assize, and chief rents, are tedious and difficult; Be it therefore enacted by the authority aforesaid, That from and after the twenty-fourth day of *June* one thousand seven hundred and thirty-one, all and every person or persons, bodies politick and corporate, shall and may have the like remedy by distress, and by impounding and selling the same, in cases of rents, seck rents of assize and chief rents, which have been duly answered or paid for the space of three years, within the space of twenty years before the first day of this present session of parliament, or shall be hereafter created, as in case of rent reserved upon lease; any law or usage to the contrary notwithstanding.

*SECT. 6.* " And whereas many persons hold considerable estates by leases for lives or years, and lease out the same in parcels to several under tenants: And whereas many of those leases cannot by law be renewed without a surrender of all the under leases derived out of the same, so that it is in the power of any such under tenants to prevent or delay the renewing of the principal lease, by refusing to surrender their under leases,  
notwith-

notwithstanding they have covenanted so to do, to the great prejudice of their immediate landlords, the first lessees: for preventing such inconveniencies, and for making the renewal of leases more easy for the future; Be it enacted by the authority aforesaid, That in case any lease shall be duly surrendered, in order to be renewed, and a new lease made and executed by the chief landlord or landlords, the same new lease shall, without a surrender of all or any the under leases, be as good and valid, to all intents and purposes, as if all the under leases derived thereout had been likewise surrendered at or before the taking of such new lease; and all and every person and persons, in whom any estate for life or lives, or for years, shall from time to time be vested by virtue of such new lease, and his, her and their executors and administrators, shall be intitled to the rents, covenants and duties, and have like remedy for recovery thereof, and the under lessees shall hold and enjoy the messuages, lands and tenements in the respective under leases comprised, as if the original leases, out of which the respective under leases are derived, had been still kept on foot and continued, and the chief landlord and landlords shall have and be intitled to such and the same remedy, by distress or entry in and upon the messuages, lands, tenements and hereditaments comprised in any such under lease, for the rents and duties reserved by such new lease, so far as the same exceed not the rents and duties reserved in the lease, out of which such under lease was derived, as they would have had in case such former lease had been still continued, or as they would have had in case the respective under leases had been renewed under such new principal lease; any law, custom or usage to the contrary hereof notwithstanding.

Chief leases may be renewed without surrendering all the under leases.

*Sec. 7.* “ Provided always, That nothing in this act contained shall extend to that part of *Great Britain* called *Scotland*.

Not to extend to Scotland,

**Stat.** 11 *Geo. 2. c. 19.* [*A. D. 1738. Intituled*] “ An act for the more effectual securing the payment of rents, and preventing frauds by tenants.”

“ Whereas the several laws heretofore made for the better security of rents, and to prevent frauds committed by tenants, have not proved sufficient to obtain the good ends and purposes designed thereby, but rather the fraudulent practices of tenants, and the mischief intended by the said acts to be prevented, have of late years increased, to the great loss and damage of their lessors and landlords: For remedy whereof, may it please your most excellent majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June* in the year of our Lord one thousand seven hundred and thirty-eight, in case any tenant or tenants, lessee or lessees for life or lives, term of years, at will, sufferance or otherwise, of any messuages, lands, tenements or hereditaments, upon the demise or holding whereof any

Preambles,

Landlords may distress and sell goods fraudulently carried off the premises,.



## Distress.

rent is or shall be reserved, due or made payable, shall fraudlently or clandestinely convey away, or carry off or from such premises, his, her or their goods or chattels, to prevent the landlord or lessor, landlords or lessors, from distraining the same for arrears of rent so reserved, due or made payable; it shall and may be lawful to and for every landlord or lessor, landlords or lessors, within that part of *Great Britain* called *England*, dominion of *Wales*, or the town of *Berwick upon Tweed*, or any person or persons by him, her or them for that purpose lawfully impowered, within the space of thirty days next ensuing such conveying away or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels, wherever the same shall be found, as a distress for the said arrears of rent; and the same to sell or otherwise dispose of in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, lessors or landlords in and upon such premises for such arrears of rent; any law, custom or usage to the contrary in any wise notwithstanding.

unless sold to  
any person not  
privity to the  
fraud.

*Secl. 2.* " Provided always, That no landlord or lessor, or other person intitled to such arrears of rent, shall take or seize any such goods or chattels as a distress for the same, which shall be sold *bona fide*, and for a valuable consideration, before such seizure made, to any person or persons not privy to such fraud as aforesaid; any thing herein contained to the contrary notwithstanding.

Penalty on the  
said fraud, or  
assisting there-  
to.

*Secl. 3.* " And to deter tenants from such fraudulent conveying away their goods and chattels, and others from wilfully aiding or assisting therein, or concealing the same; Be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June*, if any such tenant or lessee shall fraudulently remove and convey away his or her goods or chattels, as aforesaid; or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away or carrying off of any part of his or her goods or chattels, or in concealing the same; all and every person or persons so offending shall forfeit and pay to the landlord or landlords, lessor or lessors, from whose estate such goods and chattels were fraudulently carried off as aforesaid, double the value of the goods by him, her or them respectively carried off or concealed as aforesaid; to be recovered by action of debt in any of his majesty's courts of record at *Westminster*, or in the courts of session in the counties palatine of *Chester*, *Lancaster* or *Durham* respectively, or in the court of grand sessions in *Wales*; wherein no essoin, protection or wager of law shall be allowed, nor more than one imparlance.

If the goods  
exceed not the  
value of 50 l.  
landlords to  
have recourse  
to two justices.

*Secl. 4.* " Provided always, and be it enacted by the authority aforesaid, That where the goods and chattels so fraudulently carried off or concealed shall not exceed the value of fifty pounds, it shall and may be lawful for the landlord or landlords, from whose estate such goods or chattels were removed, his, her or their bailiff, servant or agent, in his, her or their behalf, to exhibit a complaint in writing against such offender or  
offen-

offenders before two or more justices of the peace of the same county, riding or division of such county, residing near the place whence such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed; who may summon the parties concerned, examine the fact, and all proper witnesses upon oath; or if any such witnesses be one of the people called *Quakers*, upon affirmation required by law; and in a summary way determine, whether such person or persons be guilty of the offence, with which he or they are charged; and to enquire in like manner of the value of the goods and chattels by him, her or them respectively so fraudulently carried off or concealed as aforesaid; and, upon full proof of the offence, by order under their hands and seals, the said justices of peace may and shall adjudge the offender or offenders to pay double the value of the said goods and chattels to such landlord or landlords, his, her or their bailiff, servant or agent, at such time as the said justices shall appoint: And in case the offender or offenders having notice of such order, shall refuse or neglect so to do, may and shall, by warrant under their hands and seals, levy the same by distress and sale of the goods and chattels of the offender or offenders; and for want of such distress may commit the offender or offenders to the house of correction, there to be kept to hard labour without bail or mainprize for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied.

*Secl. 5.* " Provided also, That it shall and may be lawful for any person, who thinks himself aggrieved by such order of the said two justices, to appeal from them to the justices of peace at their next general or quarter-sessions, to be held for the same county, riding or division of such county, who may and shall hear and determine such appeal, and give such costs to either party as they shall think reasonable, whose determination therein shall be final. Appeal from them to the quarter sessions.

*Secl. 6.* " Provided also, That where the party appealing shall enter into a recognizance with one or two sufficient surety or sureties in double the sum so ordered to be paid, with condition to appear at such general or quarter-sessions, the order of the said two justices shall not be executed against him in the mean time. The 2 justices order, on such appeal, not to be executed.

*Secl. 7.* " And be it further enacted by the authority aforesaid, That where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or tenants, lessee or lessees, his, her or their servant or servants, agent or agents, or other person or persons aiding or assisting therein, shall be put, placed or kept in any house, barn, stable, out-house, yard, close or place locked up, fastened or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent; it shall and may be lawful for the landlord or landlords, lessor or lessors, his, her or their steward, bailiff, receiver or other person or persons empowered, to take and seize, as a distress for rent, such goods and chattels (first calling to his, her or their assistance the Landlords may break open houses to seize goods fraudulently secured therein; constable,

constable, headborough, boroughholder or other peace officer of the hundred, borough, parish, district or place where the same shall be suspected to be concealed, who are hereby required to aid and assist therein; and in case of a dwelling house, oath being also first made before some justice of the peace of a reasonable ground to suspect that such goods or chattels are therein) in the day-time, to break open and enter into such house, barn, stable, out-house, yard, close and place; and to take and seize such goods and chattels for the said arrears of rent, as he, she or they might have done by virtue of this or any former act, if such goods and chattels had been put in any open field or place.

and may distress stock or cattle on the premises, for arrears of rent.

*Sec. 8.* " And be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June*, which shall be in the year of our Lord one thousand seven hundred and thirty-eight, it shall and may be lawful to and for every lessor or landlord, lessors or landlords, or his, her or their steward, bailiff, receiver or other person or persons impowered by him, her or them, to take and seize, as a distress for arrears of rent, any cattle or stock of their respective tenant or tenants, feeding or depasturing upon any common, appendant or appurtenant, or any ways belonging to all or any part of the premises demised or holden; and also to take and seize all sorts of corn and grafs, hops, roots, fruits, pulse, or other product whatsoever, which shall be growing on any part of the estates so demised or holden, as a distress for arrears of rent; and the same to cut, gather, make, cure, carry and lay up, when ripe, in the barns or other proper place on the premises so demised or holden; and in case there shall be no barn or proper place on the premises so demised or holden, then in any other barn or proper place which such lessor or landlord, lessors or landlords shall hire or otherwise procure for that purpose, and as near as may be to the premises; and in convenient time to appraise, sell, or otherwise dispose of the same, towards satisfaction of the rent for which such distress shall have been taken, and of the charges of such distress, appraisement and sale, in the same manner as other goods and chattels may be seized, distrained and disposed of; and the appraisement thereof to be taken when cut, gathered, cured and made, and not before.

Tenants to have notice of the place where the distress is lodged.

Distress of corn, &c. to cease, if rent be paid before it be cut.

*Sec. 9.* " Provided always, That notice of the place where the goods and chattels so distrained shall be lodged or deposited, shall, within the space of one week after the lodging or depositing thereof in such place, be given to such lessee or tenant, or left at the last place of his or her abode; and that if after any distress for arrears of rent so taken, of corn, grafs, hops, roots, fruits, pulse or other product which shall be growing as aforesaid, at any time before the same shall be ripe and cut, cured or gathered, the tenant or lessee, his or her executors, administrators or assigns, shall pay or cause to be paid to the lessor or landlord, lessors or landlords, for whom such distress shall be taken, or to the steward or other person usually employed to receive the rent of such lessor or lessors, landlord or landlords, the whole rent which shall be then in arrear, together with

the full costs and charges of making such distress, and which shall have been occasioned thereby; that then, and upon such payment or lawful tender thereof actually made, whereby the end of such distress will be fully answered, the same and every part thereof shall cease; and the corn, grafs, hops, roots, fruits, pulse or other product so distrained, shall be delivered up to the lessee or tenant, his or her executors, administrators or assigns; any thing herein before contained to the contrary notwithstanding.

*Sett.* 10. " And whereas great difficulties and inconveniencies frequently arise to landlords and lessors, and other persons taking distress for rent, in removing the goods and chattels or stock distrained off the premises, in cases where by law they may not be impounded and secured thereupon; and also to the tenants themselves many times, by the damage unavoidably done to such goods and chattels, or stock, in the removal thereof; Be it enacted by the authority aforesaid, That, from and after the said twenty-fourth day of *June* one thousand seven hundred and thirty-eight, it shall and may be lawful to and for any person or persons lawfully taking any distress for any kind of rent, to impound or otherwise secure the distress so made, of what nature or kind soever it may be, in such place or on such part of the premises chargeable with the rent, as shall be most fit and convenient for the impounding and securing such distress; and to appraise, sell and dispose of the same upon the premises, in like manner and under the like directions and restraints to all intents and purposes, as any person taking a distress for rent may now do off the premises, by virtue of an act made in the second year of the reign of king *William* and queen *Mary*, intituled, *An act for enabling the sale of goods distrained for rent, in case the rent be not paid in a reasonable time*; or of another act made in the fourth year of his present majesty, intituled, *An act for the more effectual preventing frauds committed by tenants, and for the more easy recovery of rents and renewal of leases*; and that it shall and may be lawful to and for any person or persons whatsoever, to come and go to and from such place or part of the said premises, where any distress for rent shall be impounded and secured as aforesaid, in order to view, appraise and buy, and also in order to carry off or remove the same, on account of the purchaser thereof; and that if any pound-breach or rescous shall be made of any goods and chattels or stock distrained for rent, and impounded or otherwise secured by virtue of this act, the person or persons aggrieved thereby shall have the like remedy as in cases of pound-breach or rescous is given and provided by the said statute.

Distresses may  
be secured, and  
sold on the  
premises.

*Sett.* 11. " And whereas the possession of estates in lands, tenements and hereditaments is rendered very precarious by the frequent and fraudulent practice of tenants, in attorning to strangers, who claim title to the estates of their respective landlord or landlords, lessor or lessors, who by that means are turned out of possession of their respective estates, and put to the difficulty and expence of recovering the possession thereof by actions or suits at law; for remedy thereof, Be it enacted by the autho-

Attornment of  
tenants void.

Exception.

Against te-  
nants secreting  
ejectments.

Landlord im-  
powered to  
make himself  
defendant by  
joining with  
the tenant,  
&c.

rity aforesaid, That from and after the said twenty-fourth day of *June* in the year of our Lord one thousand seven hundred and thirty-eight, all and every such attornment and attornments of any tenant or tenants of any messuages, lands, tenements or hereditaments, within that part of *Great Britain* called *England*, dominion of *Wales* or town of *Berwick upon Tweed*, shall be absolutely null and void to all intents and purposes whatsoever; and the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed or construed to be any wise changed, altered or affected by any such attornment or attornments: Provided always, That nothing herein contained shall extend to vacate or affect any attornment made pursuant to and in consequence of some judgment at law, or decree or order of a court of equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee after the mortgage is become forfeited.

*Señ. 12.* “ And whereas great inconveniencies have frequently happened to landlords by their tenants secreting declarations in ejectment, which have been delivered to them, or by refusing to appear to such ejectments, or to suffer their landlords to take upon them the defence thereof; Be it further enacted by the authority aforesaid, That, from and after the said twenty-fourth day of *June* one thousand seven hundred and thirty-eight, every tenant, to whom any declaration in ejectment shall be delivered for any lands, tenements or hereditaments, in that part of *Great Britain* called *England*, dominion of *Wales* or town of *Berwick upon Tweed*, shall forthwith give notice thereof to his or her landlord or landlords, or his, her or their bailiff or receiver, under the penalty of forfeiting the value of three years improved or rack rent of the premises so demised or holden in the possession of such tenant, to the person of whom he or she holds; to be recovered by action of debt to be brought in any of his majesty's courts of record at *Westminster*, or in the counties palatine of *Chester*, *Lancaster* and *Durham*, respectively, or in the courts of grand-sessions in *Wales*; wherein no essoin, protection or wager of law shall be allowed, nor any more than one imparlance.

*Señ. 13.* “ And be it further enacted by the authority aforesaid, That it shall and may be lawful for the court where such ejectment shall be brought, to suffer the landlord or landlords to make him, her or themselves defendant or defendants, by joining with the tenant or tenants, to whom such declaration in ejectment shall be delivered, in case he or they shall appear; but in case such tenant or tenants shall refuse or neglect to appear, judgment shall be signed against the casual ejector for want of such appearance; but if the landlord or landlords of any part of the lands, tenements or hereditaments, for which such ejectment was brought, shall desire to appear by himself or themselves, and consent to enter into the like rule that by the course of the court the tenant in possession in case he or she had appeared ought to have done; then the court where such ejectment shall be brought shall and may permit such landlord or landlords so to do, and order a stay of execution upon such judgment against the casual ejector, until they shall make further order therein.

*Señ.*

*Sect. 14.* “ And to obviate some difficulties that many times occur in the recovery of rents, where the demises are not by deed, Be it further enacted by the authority aforesaid, That, from and after the said twenty-fourth day of *June*, it shall and may be lawful to and for the landlord or landlords, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements or hereditaments, held or occupied by the defendant or defendants, in an action on the case, for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action any parol demise or any agreement (not being by deed) whereon a certain rent was reserved shall appear, the plaintiff in such action shall not therefore be nonsuited, but may make use thereof as an evidence of the *quantum* of the damages to be recovered.

Rents how to be recovered, where the demises are not by deed.

*Sect. 15.* “ And whereas where any lessor or landlord, having only an estate for life in the lands, tenements or hereditaments demised, happens to die before or on the day on which any rent is reserved or made payable, such rent, or any part thereof, is not by law recoverable by the executors or administrators of such lessor or landlord; nor is the person in reversion entitled thereto, any other than for the use and occupation of such lands, tenements or hereditaments, from the death of the tenant for life; of which advantage hath been often taken by the under-tenants, who thereby avoid paying any thing for the same; for remedy whereof, Be it enacted by the authority aforesaid, That, from and after the twenty-fourth day of *June* one thousand seven hundred and thirty-eight, where any tenant for life shall happen to die before or on the day on which any rent was reserved or made payable upon any demise or lease of any lands, tenements or hereditaments, which determined on the death of such tenant for life, that the executors or administrators of such tenant for life shall and may in an action on the case recover of and from such under-tenant or under-tenants of such lands, tenements or hereditaments, if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion, of such rent according to the time such tenant for life lived of the last year, or quarter of a year, or other time in which the said rent was growing due as aforesaid, making all just allowances or a proportionable part thereof respectively.

Rents recoverable from under-tenant, where tenants for life die before the lease is expired.

*Sect. 16.* “ And whereas landlords are often great sufferers by tenants running away in arrear, and not only suffering the demised premises to lie uncultivated without any distress thereon, whereby their landlords or lessors might be satisfied for the rent-arrear, but also refusing to deliver up the possession of the demised Premises, whereby the landlords are put to the expence and delay of recovering in ejectment: Be it further enacted by the authority aforesaid, That, from and after the said twenty-fourth day of *June* one thousand seven hundred and thirty-eight, if any tenant holding any lands, tenements or hereditaments, at a rack-rent, or where the rent reserved shall be full three fourths of the yearly value of the demised premises, who shall be in arrear for one year's rent, shall desert the demised premises, and leave the same uncultivated or unoccupied, so as

Provision for landlords, where tenants desert the premises.

## Distress.

no sufficient distress can be had to countervail the arrears of rent; it shall and may be lawful to and for two or more justices of the peace of the county, riding, division or place (having no interest in the demised premises) at the request of the lessor or landlord, lessors or landlords, or his, her or their bailiff or receiver, to go upon and view the same, and to affix or cause to be affixed, on the most notorious part of the premises, notice in writing what day (at the distance of fourteen days at least) they will return to take a second view thereof; and if upon such second view the tenant, or some person on his or her behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises; then the said justices may put the landlord or landlords, lessor or lessors, into the possession of the said demised premises; and the lease thereof to such tenant, as to any demise therein contained only, shall from thenceforth become void.

Tenants may  
appeal from  
the justices.

*Stat. 17.* " Provided always, That such proceedings of the said justices shall be examinable in a summary way by the next justice or justices of assize of the respective counties in which such lands or premises lie; and if they lie in the city of *London* or county of *Middlesex*, by the judges of the courts of *King's Bench* or *Common Pleas*; and if in the counties palatine of *Chester*, *Lancaster* or *Durham*, then before the judges thereof; and if in *Wales*, then before the courts of grand-sessions respectively; who are hereby respectively impowered to order restitution to be made to such tenant, together with his or her expences and costs, to be paid by the lessor or landlord, lessors or landlords, if they shall see cause for the same; and in case they shall affirm the act of the said justices, to award costs not exceeding five pounds for the frivolous appeal.

Tenants hold-  
ing premises  
after the time  
they notify for  
quitting them,  
to pay double  
rent for such  
time.

*Stat. 18.* " And whereas great inconveniencies have happened and may happen to landlords whose tenants have power to determine their leases, by giving notice to quit the premises by them holden, and yet refusing to deliver up the possession when the landlord hath agreed with another tenant for the same; Be it further enacted by the authority aforesaid, That, from and after the said twenty-fourth day of *June* one thousand seven hundred and thirty-eight, in case any tenant or tenants shall give notice of his, her or their intention to quit the premises by him, her or them holden, at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at the time in such notice contained; that then the said tenant or tenants, his, her or their executors or administrators shall from thenceforward pay to the landlord or landlords, lessor or lessors, double the rent or sum which he, she or they should otherwise have paid; to be levied, sued for and recovered at the same times and in the same manner, as the single rent or sum before the giving such notice could be levied, sued for or recovered; and such double rent or sum shall continue to be paid during all the time such tenant or tenants shall continue in possession as aforesaid.

*Stat. 19.* " And whereas it hath sometimes happened, that upon any distress made for rent justly due, the directions of the statute made in the  
second

second year of the reign of king *William* and queen *Mary*, intituled, *An act for enabling the sale of goods distrained for rent, in case the rent be not paid in a reasonable time*, have not been strictly pursued, but through the mistake or inadvertency of the landlord or other person entituled to such rent and distraining for the same, or of the bailiff or agent of such landlord or other person, some irregularity or tortious act hath been afterwards done in the disposition of the distress so seized or taken, as aforesaid; for which irregularity or tortious act the party distraining hath been deemed a trespasser *ab initio*, and an action brought against him as such, the plaintiff hath been intitled to recover, and has actually recovered, the full value of the rent, for which such distress was taken: And whereas it is a very great hardship upon landlords and other persons intitled to rents, that a distress duly made should be thus in effect avoided for any subsequent irregularity; Be it enacted by the authority aforesaid, That, from and after the said twenty-fourth day of *June* in the year of our Lord one thousand seven hundred and thirty-eight, where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party or parties distraining, or by his, her or their agents; the distress itself shall not be therefore deemed to be unlawful, nor the party or parties making it to be deemed a trespasser or trespassers *ab initio*; but the party or parties aggrieved by such unlawful act or irregularity shall or may recover full satisfaction for the special damage he, she or they shall have sustained thereby, and no more, in an action of trespass, or on the case, at the election of the plaintiff or plaintiffs: Provided always, That where the plaintiff or plaintiffs shall recover in such action, he, she or they shall be paid his, her or their full costs of suit, and have all the like remedies for the same as in other cases of costs.

Distresses for rent not unlawful, &c. for any irregularity in the disposition of them;

*Señ. 20.* “ Provided nevertheless, That no tenant or tenants, lessee or lessees, shall recover in any action for any such unlawful act of irregularity as aforesaid, if tender of amends hath been made by the party or parties distraining, his, her or their agent or agents, before such action brought.

nor tenants to recover by action, on tender of amends.

*Señ. 21.* “ And be it further enacted by the authority aforesaid, That, from and after the said twenty-fourth day of *June* one thousand seven hundred and thirty-eight, in all actions of trespass or upon the case to be brought against any person or persons intitled to rents or services of any kind, his, her or their bailiff or receiver, or other person or persons, relating to any entry by virtue of this act, or otherwise, upon the premises chargeable with such rents or services, or to any distress or seizure, sale or disposal of any goods or chattels thereupon; it shall and may be lawful to and for the defendant or defendants in such actions to plead the general issue, and give the special matter in evidence; any law or usage to the contrary notwithstanding: and in case the plaintiff or plaintiffs in such action shall become nonsuit, discontinue his, her or their action, or have judgment against him, her or them, the defendant or defendants shall recover double costs of suit.

In actions against Persons intitled to rents, the Defendants may plead the general issue, &c.

*Señ. 22.* “ And whereas great difficulties often arise in making avowries or conuzance upon distresses for rent, quit-rents, reliefs, heriots, and

other



Defendants in replevin to make conu- zance, that the plaintiff held the premisses at a certain rent, &c.

other services; Be it further enacted by the authority aforesaid, That, from and after the said twenty-fourth day of *June* one thousand seven hundred and thirty-eight, it shall and may be lawful to and for all defendants in replevin to avow or make conu- zance generally, that the plaintiff in replevin, or other tenant of the lands and tenements whereon such distress was made, enjoyed the same under a grant or demise at such a certain rent, during the time wherein the rent distrained for incurred, which rent was then and still remains due; or that the place where the distress was taken was parcel of such certain tenements, held of such honor, lordship or manor, for which tenements the rent, relief, heriot or other service distrained for, was at the time of such distress and still remains due; without further setting forth the grant, tenure, demise or title of such landlord or landlords, lessor or lessors, owner or owners of such manor; any law or usage to the contrary notwithstanding: And if the plaintiff or plaintiffs in such action shall become nonsuit, discontinue his, her or their action, or have judgment given against him, her or them, the defendant or defendants in such replevin shall recover double costs of suit.

To prevent vexatious replevins.

*Sec. 23.* “ And to prevent vexatious replevins of distresses taken for rent, Be it enacted by the authority aforesaid, That, from and after the said twenty-fourth day of *June* one thousand seven hundred and thirty-eight, all sheriffs and other officers having authority to grant replevins, may and shall, in every replevin of a distress for rent, take, in their own names, from the plaintiff, and two responsible persons as sureties, a bond in double the value of the goods distrained (such value to be ascertained by the oath of one or more credible witness or witnesses not interested in the goods or distress; which oath the person granting such replevin is hereby authorized and required to administer) and conditioned for prosecuting the suit with effect and without delay, and for duly returning the goods and chattels distrained in case a return shall be awarded, before any deliverance be made of the distress; and that such sheriff, or other officer as aforesaid, taking any such bond, shall at the request and costs of the avowant or person making conu- zance assign such bond to the avowant or person aforesaid, by indorsing the same, and attesting it under his hand and seal in the presence of two or more credible witnesses; which may be done without any stamp, provided the assignment so indorsed be duly stamped before any action brought thereupon; and if the bond so taken and assigned be forfeited, the avowant or person making conu- zance may bring an action and recover thereupon in his own name; and the court where such action shall be brought may by a rule of the same court give such relief to the parties upon such bond as may be agreeable to justice and reason; and such rule shall have the nature and effect of a defeazance to such bond.”

*Stat. 27 Geo. 2. c. 20. [A. D. 1754. Intituled]* “ An act for the more easy and effectual proceeding upon distresses to be made by warrants of justices of the peace.”

“ Whereas by many acts of parliament, justices of the peace are im- powered to issue warrants for the distress and sale of goods and chattels,

but

but the charges of distraining, keeping and sale of such goods and chattels are not provided for in all the said acts, nor is there a time in all cases limited for the sale thereof, whereby inconveniencies have arisen: Therefore for remedy thereof, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That in all cases where any justice or justices of the peace, is or are, or shall be required or impowered by any act or acts of parliament now in force, or hereafter to be made, to issue a warrant of distress for the levying of any penalty inflicted, or any sum of money directed to be paid, by or in consequence of such act or acts, it shall and may be lawful for the justice or justices granting such warrant, therein to order and direct the goods and chattels so to be distrained, to be sold and disposed of within a certain time to be limited in such warrant, so as such time be not less than four days, nor more than eight days, unless the penalty or sum of money for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, be sooner paid.

Justices to limit in their warrants of distress the time for sale of the distress.

not less than 4, nor more than 8 days.

*Sett.* 2. "And be it further enacted, That the officer making such distress shall and is hereby impowered to deduct the reasonable charges of taking, keeping and selling such distress, out of the money arising by such sale; and the overplus (if any) after such charges, and also the said penalty or sum of money shall be fully satisfied and paid, shall be returned on demand to the owner of the goods and chattels so distrained; and the officer executing such warrant, if required, shall shew the same to the person whose goods and chattels are distrained, and shall suffer a copy thereof to be taken.

Officer to deduct the charges of keeping and selling, Overplus to be returned.

*Sett.* 3. "Provided always, That nothing herein contained shall extend, or be construed to extend, to alter or repeal any of the provisions or directions relating to distresses to be made for the payment of tithes and church rates, by the people called *Quakers*, contained in an act passed in the seventh and eighth years of his late majesty king *William the Third*, intituled, *An act that the solemn affirmation and declaration of the people called Quakers shall be accepted instead of an oath, in the usual form*; or in one other act passed in the first year of his late majesty king *George the First*, intituled, *An act for making perpetual an act of the seventh and eighth years of the reign of his late majesty king William the Third, intituled, An act that the solemn affirmation and declaration of the people called Quakers shall be accepted instead of an oath in the usual form; and for explaining and enforcing the said act in relation to the payment of tithes and church rates; and for appointing the form of an affirmation to be taken by the said people called Quakers, instead of the oath of abjuration.*

Provisions relating to tithes in 7 & 8 Will. 3. c. 34.

and 1 Geo. c. 6. not altered.

Mr. *Norton* shewed cause against quashing an order of two justices, Order on an act and an order of sessions confirming it, made in pursuance of the act of 2 Geo. 2. c. 19. § 3. (for the more effectual securing the payment of rents, and preventing frauds by tenants) against one *Thomas Middlehurst*, for wilfully and knowingly aiding or assisting *John Chesterton*, the tenant of *Sir Thomas Fleetwood*, in fraudulently removing and conveying away five cows, &c. or in concealing the same. Mr. *Gould*, who had moved

11 Geo. 2. c. 19. sect. 3. i Bur. Rep. 399. Trin. 30 & 31 Geo. 2. Rex v. Middlehurst.

moved to quash this order, founded his motion upon two objections; viz. 1st objection. The whole adjudication refers to the complaint of one *Thomas Weston*; wherein there is no charge upon *Chesterton*, the tenant, at all; nor upon the defendant *Middlehurst*, for aiding and assisting him: neither is it stated "that *Chesterton*, the tenant, did remove the goods." 2d objection. The act creates two offences, viz. assisting in removing, and assisting in concealing the goods. Now it is not specifically charged upon the defendant *Middlehurst*, that he wilfully and knowingly did either one of these two things: It is only alledged that he wilfully and knowingly did one or the other. In 1 *Salk.* 371. *Rex v. Stocker*, an indictment for forging, or causing to be forged, was holden ill; because the charge was in the disjunctive. 2 *Hawk. P. C.* 225. § 60. An indictment charging a man disjunctively, is void; for the offences are distinct; and it appears not of which of them the defendant is accused. So here, it does not appear which of the two offences the justices have convicted him of. And 2 *Lord Raym.* 1265. *Queen v. Baines*, proves that the court will make no intendment against the defendant. Upon which objections he obtained a rule to shew cause "why the order should not be quashed." And now Mr. *Norton* shewed the following cause against quashing it. As to the first objection, "That it is not described sufficiently "what the offence is;" he answered, that this is an order; and the court will not intend it to be ill. To prove which, he cited *Rex v. Biffex*, *Tr.* 29 *Geo.* 2. *B. R.* As to the 2d. The charge being in the disjunctive, "That he "wilfully and knowingly aided and assisted the tenant in removing the "goods, or in concealing the same." He said, The crime and the punishment are the same upon both: And the defendant was heard. Mr. *Gould* for the defendant replied, 1st, It is not at all stated "That the tenant did "remove the goods. 2dly, The aiding and assisting in removing, is a different offence from aiding and assisting in concealing: And here it is only charged in the alternative.

*Lord Mansfield.*—Upon indictments it has been so determined, "That "an alternative charge is not good;" as "forged or caused to be forged:" though one only need be proved, if laid conjunctively, (as "forged and caused to be forged.") But I don't see the reason of it: the substance is exactly the same; the defendant must come prepared against both; and it makes no difference to him in any respect. But this is an order; and being good in substance, needs not be literally so strict. Mr. Justice *Denison* thought also that the cases upon indictments are very nice. But this is not an indictment, but an order; and therefore being good in substance, needs not be so strict in form as an indictment must be. And either aiding or assisting in removing, or aiding or assisting in concealing, is equally an offence: and these are the very words of the act. 'Tis only form, and does not at all vary the punishment. I am not therefore inclined to the same strictness as was observed in the case of *The King v. Stocker*, in 1 *Salk.* 371. *Per Cur.* rule discharged; and consequently both orders affirmed.

Order

Order made by two justices, reciting that a complaint had been made to them by *A. Clavey* against *J. Biffex*; that he the said *Clavey* demised his estate in the parish of *Shelley* in the county of *Somerset*, to *William Thatcher*, at the yearly rent of 44*l.* and that there was due and in arrear from *Thatcher* to him for rent of the said estate, on the 5th day of *April* last, 24*l.* 15*s.* 8½*d.* and that he the said *Clavey* would have distrained the goods and chattels of the said *William Thatcher* upon the said estate, in order to obtain satisfaction of the said rent; but to prevent him from so doing, the said *Biffex*, on or about the 27th, 28th or 29th days of *August* last, did knowingly and wilfully aid and assist the said *Thatcher* in fraudulently conveying and carrying off from the said estate his the said *Thatcher's* goods and chattels, and also in concealing the same, being under the value of 50*l.* that is to say, two cows, one heifer, and ten hundred weight of cheese, of the value of 20*l.* whereby the said *Clavey* was prevented from distraining the same, in order to obtain satisfaction for the said rent, and contrary to the statute 11 *Geo.* 2. and therefore praying us to grant him our warrant of summons, requiring you the said *J. Biffex* to appear before us, and that we would examine the fact, and thereupon make such order therein for his relief as the said statute directs and requires, and as should be agreeable to justice. Whereupon we the said justices, residing near the said estate from whence the said goods and cattle were removed, and neither of us any way interested in the said estate, did issue our warrant of summons, requiring you the said *J. Biffex* to attend us thereon to answer the said complaint; and you having attended accordingly, and we in your presence having examined the witnesses produced by the said *A. Clavey* upon oath, and heard what was alledged by you in your defence, do adjudge that the said complaint is true; and that the said goods and cattle of the said *W. Thatcher*, in which you so aided and assisted in conveying and carrying off from the said estate, and also in concealing the same, were of the value of 20*l.* and that you have thereby forfeited double of the value of the said goods and cattle, being the sum of 40*l.* to the said complainant *A. Clavey*, by virtue of the said statute. We therefore, in pursuance of the said statute, do adjudge, order and require you the said *J. Biffex*, within the space of three days from the date hereof, to pay to the said *A. Clavey* the sum of 40*l.* which if you shall neglect to do, such further proceedings will be then had against you to enforce the payment thereof as the said statute directs and requires. Given under our hands and seals this 5th day of *January* 1756. This order was affirmed by the sessions upon appeal. Both the orders were removed by *certiorari* into the *King's Bench*. It was moved to quash the same. Objections taken: 1. The complaint is said to be taken in writing, but not upon oath. 2. It is only said, that he demised to *W. Thatcher*; but not said for what estate or term. 3. It is stated, so much was due for rent, but not said for what term: it might be due twenty years ago. It is not stated to be due, when *Thatcher* removed his goods. 4. The words of the order are, goods and cattle; of the statute goods and chattels. 5. No

certain time is alledged when the defendant aided and assisted; only said, on or about the 26th, 27th or 28th of *August*. 6. Not stated that *Thatcher* did carry off his goods: only that *Bissex* did aid and assist him in carrying them off. 7. They adjudge the complaint true, but do not state the evidence: and this is a conviction, not an order: and for any thing that appears, it might be upon *Clavey's* evidence alone. 8. It is not stated that the goods were under the value of 50 *l.* which is the ground of the justices jurisdiction. 9. The words of the statute are, If any person shall be a tenant of any lands, tenements or hereditaments: The word used in the order is *estate*; which may be a thing incorporeal, or may mean the interest in the land, and so not within the statute. It should appear, whether the landlord has a right to distrain. By the 8 *Ann. c.* 14. the landlord may distrain at any time within six months after the expiration of the term: it doth not appear these six months were not expired; and if they were, this is no offence. After consideration, Mr. Justice *Denison* delivered the resolution of the court. I think the most material objection is, whether this is an order or a conviction. If a conviction, the evidence ought to have been set out. And there has been no doubt (notwithstanding the case of *K. and Pulleine*, 1 *Salk.* 369.) that in a conviction the evidence must be set out, that the court may judge upon it. So it was held by Lord *Hardwicke* in the case of *K. and Lloyd*, *Str.* 996. and in that case it was objected, that as it subjected the party to a penalty, though in the statute it was called an order, yet it should be construed as a conviction: but the court said, every act of the justices, which subjects the party to a penalty, shall not be construed as a conviction. *K. and Venables*, *Str.* 630. 2 *L. Raym.* 1406. upon the statute for licensing ale-houses, considered as an order. *K. and Blackwell*, *Mich.* 4 *Geo.* which the court said was a strong case, and must be considered as an order. I understood from my Lord *Hardwicke* in the case of *K. and Lloyd*, that his ground of the difference was founded upon the expressions of the statute, and not upon the penalty; as where the words of a statute are "of which he shall be convicted," it is to be construed as a conviction. Here it is extremely strong; the statute calls it an order; and in the nature of it, it is an examination upon a complaint. If the party was never summoned, this court upon affidavit will grant an information against the justices; but the summons need not be set out; and the court will intend the justices have done right, in case the contrary does not appear upon the face of the order. As to the first objection: This is not an information, but a complaint: when the party is summoned, the witnesses are to be examined upon oath, but the complaint need not be upon oath. In answer to the second objection: As the order has followed the words of the statute, we will not intend it a case wherein the justices had not a jurisdiction. The court will not, in case of an order, intend that the justices have done wrong. As to the 3d objection: It is sufficiently alledged in an order; his assisting the tenant to carry away the goods, as it is here alledged, is sufficient to shew the rent continued then to be in arrear, and the rather as the defend-

dant might have availed himself of the rent paid, by proving it before the justices. I much doubt; whether in a declaration it would not be sufficient to say, the rent was in arrear at such a day; and I think it would lie upon the defendant to prove that the rent does not remain in arrear. As to its not being said, for what time the rent was due; this is mere matter of form. As to the fifth objection: *About*, in common parlance, means in this case three days or near it. They might be three days in carrying the goods away. The days are not material, even in legal proceedings. 1 L. Raym. 581. And in the case of *K. and Simpson*, H. 3 Geo. Str. 46. the day and hour in a conviction are not material. By this statute no time is limited when the complaint shall be made: it may be made at any time. Suppose the defendant had paid the penalty on a different complaint made, he might easily have shewn it. As to the 6th: The answer is obvious; if *Thatcher* had not carried his goods away, the defendant could not have aided in carrying them. The statute makes two offences; one, carrying the goods away; the other, aiding in carrying them away. It is only necessary here to state the offence which the defendant had been guilty of, which this order does in the words of the statute. In the case of *K. and Monk*, M. 13 Geo. 2. there was a conviction for aiding and assisting in killing a buck. It was objected, that it was not charged the buck was killed. But the court held, that as the conviction was in the words of the statute, it was sufficient. And the court held they were all principals, as well those that killed the buck, as those that assisted. And this was the case of a conviction.—All the other objections may have this general answer; that in the case of orders, where the justices have jurisdiction, we will intend they have acted right; and if they have done wrong, they may be punished by an information.—Let the orders be confirmed.

Tenant in tail, remainder to the defendant in fee, leases for years, and dies without issue a week before the day of payment of the half year's rent. The lessee, at the day, pays all the half year's rent to the defendant. The executor of the tenant in tail brings his bill for apportionment of the rent. —By the lord chancellor *Hardwicke*: This point has never been determined; but this is so strong a case, that I shall make it a precedent. There are in it two grounds for relief in equity. The first arises on the statute of 11 G. 2. The second arises on the tenant's having submitted to pay the rent to the defendant. The relief arising upon the statute, is, either from the strict legal construction, or equity formed upon the reason of it. And here it is proper to consider, what the mischief was before the act, and what remedy is provided at common law. If tenant for life, or any who had a determinable estate, died but a day before the rent reserved on a lease of his became due, the rent was lost. For no one was intitled to recover it. His representatives could not; because they could only bring action for the use and occupation; and that would not lie where there was a lease, but debt or covenant. Nor could the remainderman; because it did not accrue in his time. Now this act appoints the apportioning the rent, and gives the remedy. But there are two descrip-

Tenant in tail is within the act 11 Geo. 2. c. 19. §. 15. (See page 771) 1 Burn's Just. 437. Dec. 4. 1753. In the case of *Pagett* and *Lee*.

tions of the person, to whose executors the remedy is given. In the preamble, it is one having only an estate for life. In the enacting part, it is, tenant for life. Now tenant in tail comes expressly within the mischief. I do not know how the judges at common law would construe it, but I should be inclined in this court to extend it to them. I should make no doubt, were this the case of tenant in tail after possibility of issue extinct; for he is considered in many respects as tenant for life only. He cannot suffer a recovery. He may be enjoined from committing waste, being considered as to that as tenant in tail. Were it the case of tenant for years determinable on lives, he certainly must be included within the act, tho' it says only tenant for life. It would be playing with the words to say otherwise. These cases shew the necessity of construing this act beyond the words.

Tenant in tail has certainly a larger estate than a mere tenant for life; for he has the inheritance in him, and may when he pleases turn it into a fee: but if he does not; at the instant of his death he has but an interest for life. Such too is the case of a wife tenant in tail *ex provisione mariti*. Upon this point I give no absolute opinion. As to the equity arising from this statute, I know no better rule than this, *equitas sequitur legem*. Where equity finds a rule of law agreeable to conscience, it pursues the sense of it to analogous cases. If it does so as to maxims of the common law, why not as to the reasons of acts of parliament? Nay, it has actually done so, on the statute of forcible entry, upon which, this court grounds bills, not only to remove the force, but to quiet the possession. That act requires a legal estate in possession. This court extends the reason to equitable interests. But I ground my opinion in this case, upon the tenant's having submitted to pay the rent. He has held himself bound in conscience to pay it, for the use and occupation of the land the last half year. He paid it to the defendant, which he was not bound to do in law. And in such a case, the person he pays it to shall be accountable, and considered as receiving it for those who are in equity intitled to it. The division must be that prescribed by the statute; and then the plaintiff is intitled to such a proportion of the rent as accrued during the testator's life. And accordingly it was decreed.

This was a special case from *Surry* assizes, before *Ld. Ch. J. Willes*. It was an action of trespass against the justices of peace, the parish officers, the constables, and their assistants; for executing a warrant of distress made by these two justices, upon a poor-rate amounting to 13 l. 2 s. and a verdict was found for the plaintiff, against all the defendants, subject to the opinion of the court, upon the whole matter. The distress at first taken, was 5 geldings, stated to be beasts of the plough and cart; with their halters. Which first distress not being sufficient, they distrained a second time, under the same warrant; and took 3 other geldings, which were and are stated to have been also beasts of the plough and cart, of the value of 36 l. 17 s. with their halters. It is expressly stated, "That upon the former

What things  
may be dis-  
trained for a  
poor-rate, &c.  
1 Bur. Rep.  
579. East.  
31 Geo. 2.  
Friday 20th  
April 1758.  
*Hutchins v.*  
*Chambers et*  
*al.*

former distress, there were other goods, &c. more than sufficient to answer the value of the demand, besides these beasts of the plough and cart. This case was first argued on *Tuesday* the 31st of *January* 1758, by Mr. *Knowler* for the plaintiff, and Mr *Gould* for the defendants; and again, on *Friday* the 14th of *April* 1758, by Mr. *Stowe* for the plaintiff, and Mr. *Williams* for the defendants. There were 5 questions stated for the opinion of the court, viz. 1st, Whether the rate and assessment was a good and sufficient rate and assessment, in point of law: and if not, then whether the plaintiff can avail himself of any objection to it. 2d Question, Whether the warrant ought to have fixed and limited the time within which the geldings and goods distrained were to be sold: and whether for want thereof, the warrant is void, and the defendants, or any, or which of them, are trespassers. 3d Question, Whether the second distress is at all justifiable. 4th Question, Whether the geldings, being beasts of the plough, and used by the plaintiff, both for the plough and cart, were liable to be taken and distrained for the said rate and assessment. 5th Question, Whether, upon the whole state of the case, the plaintiff's action is maintainable against the defendants, or any, and which of them. And a 6th question, Whether the second distress was not excessive, arose upon the argument.

After the first argument, (in which, the distress was treated as a common-law distress; and Mr. *Knowler* expressly denied it to be an execution, because it was repleviable; and insisted that the statute *de districtione scaccarii* is general, is declaratory of the common law, and extends to all distresses for any cause whatsoever;) lord *Mansfield*, finding that the parties proposed speaking to it again, took notice that all about the rates is clearly out of the present case: for if they are bad, the parties who thought themselves aggrieved, should have appealed. So all about the warrants may be laid out of the case. For the warrant is not void, so as to make it a trespass *ab initio*. Therefore the future argument may be confined to the other objections. *Ulterius concilium*.

Mr. *Stowe*, who argued for the plaintiff, on *Friday* the 14th of *April* 1758, passed over 1st and 2d questions, upon what the court had intimated after the former argument; and proceeded directly to the 3d question. It is stated that here was sufficient distress, the first time: and therefore the second was not justifiable. *Co. Lit.* 272. *b.* *Cro. Eliz. B.* *Moor* 7. 2 *Lutw.* 1532. *Wallis v. Savill.* *Fitz. H. N. B.* title *Recaption.* 8 *Co.* 50. *John Webb's case.* And this is a duty of a less nature than rent: and yet even in that case, a double distress is unlawful. A second reason why the second distress was not good nor justifiable, is, because the warrant is not an authority to take it: for, the warrant having been once executed, had performed its office; and consequently was no more than a piece of waste paper, at the time of taking the second distress. 4th Question, Beasts of the plough (though used both for plough and cart) cannot be distrained for a rate, when there are other goods sufficient. 51 *H. 3. stat.* 4. *De districtione scaccarii.* "None shall be distrained by his beasts that gaigne his land, nor by his sheep, &c." 2 *Inq.* 133. is large and express, "That this



## Distress.

this was so by the common and civil law; and that this statute extends to all sorts of distresses whatsoever; also to all manner of executions, as well at the suit of the king, as of the subject." *Dyer* 312.

The words *levy the debt* cannot be applicable merely to lord and tenant; but are general, and extend to all distresses whatsoever. 1 *Inst.* 289. b. 2 *Inst.* 133. 6th Question, Whether the second distress is not excessive. He argued that this distress was excessive; being a distress taken of 3 geldings, of triple the value: for the value was 36 l. 17 s. and the sum distrained for, only one-third (or very little more) of that sum, *viz.* 13 l. 2 s. which is excessive upon the face of it. And he cited 1 *Roll. Abr.* 674. where instances are given of distresses excessive upon the face of them. 1 *Inst.* 107. And this distress is not an *entire* distress: but a distress of 3 distinct things. And an excessive distress of several distinct things is not maintainable: and an action of trespass will lie for it. *H.* 28 G. 2. *Moir v. Munday et al'*, which was a distress of a great quantity of pedlar's goods (of the value of 100 l.) which might have been seised; for only 6 s. 8 d. Therefore both the first and second distresss are illegal. Wherefore he prayed judgment for the plaintiff.

Mr. *Williams* contra, for the defendants. He confined himself to these three questions, *viz.* First, Whether under the statute of 43 *Eliz.* *Averia caruce* can be distrained for the poor's rate, where there is other sufficient distress. 2dly, Whether under the warrant for levying the sum assessed, a second distress can be made; where the first is sufficient, and a sufficient distress might have been taken in the first instance. 3dly, If a second distress can be made; Whether the second distress is not excessive, and whether, on that account, this action can be maintained. And he observed, that the two justices are not concerned in these present questions, now remaining before the court. He observed likewise, that the first distress being a trespass or not, depended entirely upon the first of his three questions; and the second distress's being a trespass or not, depended entirely upon the two last of them; and all the three questions depended principally upon the statute of 43 *Eliz.* He begun with his own first question, (which was the 4th original question :) and he first considered the nature of the duty created by the 43 of *Elizabeth*, and then the nature of the remedy thereby given for the recovery of that duty. The duty is not a tax upon the land, nor payable out of it; but a charge upon the person: and it is a tax throughout the kingdom, and for public benefit. This is not to be considered upon the foot of a common law distress: the nature, design, and end of this public duty required the most effectual and speedy remedy that could be devised. The reason why the beasts of the plough could not be distrained at common law, will not hold in the present case. This is similar to an execution, and essentially different from a distress at common law. At common law the distress could not be sold: It was only taken *nomine pænæ*, not as a satisfaction, (which is this,) for the duty. The reasons of the privilege do not now hold. Agriculture then wanted and required encouragement, and must have

have been impeded by a common law distress. Now, it does not. Then, the thing distrained could not be sold; and remained useless: Now, it may be sold. The debt, there, was of a private nature: this here, is of a public nature. This distress is not taken as a pledge, or as a mean to compel, but for a satisfaction for the duty itself, a personal duty, and of a public nature. 1 *Ld. Raym* 386. *Vinkensterne v. Ebdon*. Sir *T. Raym*. 232. *Prideaux v. Warne*. 2 *Lev*. 96. *S. C.* *Cro. Eliz.* 710. *Smith v. Shepheard*, proves that the rule is not applicable to distresses for such duties. They are prescriptions for toll-through: and the first and last are instances of sheep, &c. taken for tolls.

As to the statute *de Distractione Scaccarii*: Comparing that statute with the statute of *Articuli super Chartas*, 28 *Ed.* 1. *c.* 12. (which refers to the stat. *de Distractione Scaccarii*) and attending to the words of it, it can never be taken to extend to such cases as the present; to parliamentary remedies, at that time unknown. It is confined to such distresses as could be sold; to cases of the grantees of the crown, or where the prerogative of the crown was concerned. The mischief, at that time, was the unbounded power of the prerogative in distresses, and the great abuse and oppression exercised by the king's bailiffs and by lords of liberties. The king, by his prerogative at the common law, might take the land, as well as the goods and chattels, in execution; (Sir *William Herbert's* case, 3 *Co.* 12.) consequently, the beasts of the plough. And though sheep are expressly mentioned in that act, yet sheep may be distrained for toll; which proves "that this act does not extend to all distresses." *Cro. Eliz.* 710. is so, *Smith v. Shepheard*. Where sheep were taken for a toll of 2 *d.* for every twenty sheep; and no sort of objection, "that sheep were not distrainable." Besides, the act of 43 *Eliz.* *cap.* 2. is an implied repeal of the stat. *de Distractione Scaccarii*. Another answer to this act is, That if they would have availed themselves of it, a special action ought to have been brought upon this particular statute. *Register* 97. *b.* & *F. N. B.* 89. & *F. N. B.* 90. are particular forms of writs upon it. So, upon the stat of *Marlbridge*, *c.* 4. (which prohibits unreasonable distresses) trespass will not lie for an unreasonable distress: But the remedy must be by a special action founded on the statute. In 2 *Strange* 851. *Lynne v. Moody*, it was adjudged "that trespass will not lie for taking an excessive distress: "But the remedy ought to be by special action founded on the statute of "Marlbridge." And on the same statute, "That distresses taken in one "county shall not be driven into another," there are writs formed. *Register* 97. *F. N. B.* 82. But trespass will not lie: It must be a special action. 3 *Lev.* 48. *Woodcroft v. Thompson*. The three judges held (against *North*) "That he that would take advantage of the statute of *Marlbridge*, "c. 4. and 1 & 2 *P. & M.* *c.* 12. ought to do it by way of action, &c." Their argument would prove too much: For sheep were privileged by the common law; and by the stat. *de Distractione Scaccarii*, expressly, "No man shall be distrained by, &c.—nor by his sheep." But sheep are now allowed to be distrainable for a poor's rate. So are the other things mentioned by Lord *Coke* (from the *Mirror*) in his 2 *Inst.* 133. as not distrainable at common law, if there were other goods sufficient.

All.

## Distress.

All these are surely distrainable for this rate. 1 *Ld. Raym.* 386. *Raym.* 232. and 2 *Lev.* 96. *S. C. Cro. Eliz.* 710. Therefore the 43 of *Eliz.* is not confined to common law distresses. But these beasts are stated to be "beasts of the plough and cart." Therefore they are distrainable: For beasts of the cart are not privileged. 1 *Sid.* 422, 440. *Welch v. Bell.* 2 *Keb.* 595. *S. C. Braff. lib.* 4. 217. *b.* speaks of oxen as beasts of the plough. However, this is an execution; and therefore none of the arguments relative to the distresses can be applied to this case. When goods are seized in execution on a *Fieri facias*, the debt is discharged. So is 2 *Ld. Raym.* 1072. *Clerk v. Withers.* This is a distress for a satisfaction of the demand; not for a pain, or penalty or pledge. Consequently it is an execution. This is the essential difference between an execution and a distress at common law.

In the case of *Rex v. Speed.* Cases temp. W. 3. 328. A *Levari facias* out of *B. R.* after affirmation of a conviction for deer-stealing, was holden regular: and it was considered as an execution; for per *Holt*, "When a statute says money shall be levied by distress, this is an execution." Therefore, it being an execution, beasts of the plough might have been taken. And so they may here, this being an execution. What has been urged on the other side, from 2 *Inst.* 133. "That the statute *de Distractione Scaccarii* extends to all distresses whatsoever, and likewise to executions," is one of the very few mistakes of that excellent writer. And this opinion of Lord *Coke* is not only contrary to common experience; but also to the opinion of Lord Chief Justice *Holt*, in *Comberb.* 356. *Hardisty v. Barney*; where *Holt* said, "That upon a *Fieri facias* the sheriff may take any thing but wearing cloaths: nay, if the party has two gowns, he may take one of them." And sheep are notoriously distrainable now: and yet they are expressly and by name, within the stat. *de Distractione Scaccarii.* The stat. of *Westm.* 2. c. 18. which gives the *elegit*, expressly excepts beasts of the plough. At that time the legislature thought such exception necessary. And *Dyer* 7. *b. pl.* 10. says, That a man shall not have execution of the profits of a filazer's office; because he cannot grant and assign it. So that the true rule seems, from that case, to be, "that whatever may be assigned by the party, may be taken in execution, *et e contra.*" The doctrine on which these gentlemen build their arguments, is now obsolete, and unknown to the generality of mankind: and it would be very inconvenient to re-establish it. And this distress is for the benefit of the debtor, as these things are most saleable; and of no prejudice to any body. And no case is cited on the part of the plaintiff. In 3 *Salk.* 136. it is said to have been adjudged "that the rule of common law, to exempt, &c. extends to cases where a distress is given in the nature of an execution, by any particular statute, as for poor rates, &c." But perhaps this is no authority to be relied on. As to the next question: I agree to 2 *Lutw.* 1532. "That a second distress can not be taken for the remainder of the same rent, where the first distress was only for parcel of the whole rent due." But in this present case, if the officer is deceived in the value of the first distress, he may take a second: So

if the first dies in the pound, (*Dyer* 280. *b. pl.* 14.) or is by accident become ineffectual; or if the officer did not know that there were such other goods; which last might be the present case: These cannot be looked upon as two distinct distresses for one entire demand. But if this be considered as an execution, then there can be no doubt about it. For the sheriff may, in such case, re-enter before the return of his writ, to complete his execution. And this last reason equally answers the objection to the warrant: for that is not completed and finished till the whole demand is levied. 6th Question. As to the excessiveness of the second distress, He did not much contend that it was not so: but he insisted that an action of trespass will not lie for taking an excessive distress. For proof of which, he relied on the case of *Lynn v. Moody*, 2 *Strange* 851. and the case in 3 *Lev.* 48. *Woodcroft v. Thompson*. The declaration contains two counts; one for each trespass: and the damages are given jointly for both. Therefore it is incumbent upon the plaintiff, to shew that both these distresses are illegal.

Mr. *Stowe* in reply: The cases of tolls are not applicable to the present case. Agriculture deserves encouragement now, as well as formerly. I suppose the king's distress might be sold at common law: therefore the act *de Distractione Scaccarii* does not extend to executions. And the 43 of *Eliz.* has not repealed it. These beasts are privileged, if there be sufficient besides: and here was sufficient besides. Beasts of cart are within the same reason, as beasts of plough: they *gaignent son terre*, as the statute of 51 *H.* 3. says. The arguments of obsolescence and ignorance will not hold: for the former is not true; and the latter will not excuse. 'Tis no part of the case, "That they did not at first know the value." And it is begging the question to say "That he may take a second distress, when the first was not sufficient." That is the very thing that wants to be proved. As to the case of *Lynne v. Moody*: The entry there was at first lawful; and there was nothing subsequent to make that lawful entry a trespass. But here, the second entry to take the second distress, was tortious: and therefore they are liable to an action. So that that determination does not affect the present case. *Cur. advis.*

This cause now standing in the paper, for the resolution of the court, Lord *Mansfield* delivered their opinion. The rule of *Nisi prius* is so conceived as to submit the case to the opinion of the court, be that whatever it may; and so as to obviate all objections to the form of the pleadings and finding of the verdict. In stating the case, he observed that there were other things which might have been taken upon the first distress, besides those which were actually distrained: but not upon the second (from any thing that appears.) Upon the first argument, the two first objections were laid out of the question; especially since the 17 *Geo.* 2. *c.* 38. So that the justices were out of the case. For a defect in the rate (unappealed from) could not avoid the warrant, nor is the warrant void, so as to make it a trespass *ab initio*: and the justices could not be trespassers, by what the officers afterwards did.

## Distress.

So that it was reduced to three questions: *Viz.* 1st, Whether (upon the first distress) *Averia Carucæ* could be taken and distrained for a poor's rate and assessment; when there were other things that might have been distrained, and which were more than sufficient to answer the value of the demand. The 2d question turned upon two objections to the second distress; *viz.* 1st, Whether the second distress, under the same warrant, was at all justifiable, when there was enough that might have been taken upon the first; and 2dly, Whether this second distress, being excessive, that circumstance alone was not a sufficient ground to maintain this action of trespass, independant of any other consideration. On the second argument, Mr. *Williams* not only argued very well as counsel for this client; but he explained the whole learning of distresses at common law; which were a *Nomine pænæ*, not a satisfaction: and as I adopt the reasoning of his argument throughout, to avoid repetition now, I will in a great measure refer to it for the grounds of the opinion which the court is of. The first question is, "Whether *Averia Carucæ* may be taken for a distress "upon the poor's rate, where there are other distrainable goods sufficient." As to this, the solid distinction is, "That the seizing under the 43 of *Eliz.* and such like acts of parliament, is but partly analogous to the common law distress, (as being repleviable, &c.) but is much more analogous to the common law execution; (like a *Fieri facias*, where the surplus, after sale, shall be returned.) In the old common law distresses, which were in the nature of a *Nomine pænæ* to compel payment, it would have been absurd to have suffered the implements by which a man gained his livelihood to be holden as a pledge: because that would have been taking from the man the only means he had of being able to pay the debt. But this reason don't hold where the things distrained may immediately be sold by way of satisfaction; which, though called a distress, yet really is in this respect an execution. The adjudication said to have been made in *M. 8 W. 3. C. B.* in 3 *Salk.* 136. was very properly cited by Mr. *Williams*, as no sufficient authority, and not (of itself) to be relied upon: But I take it that the same reason was gone upon, in the case of 1 *Ld. Raym.* 386. *Vinkenstern v. Ebdon*, *M. 10 W. 3. B. R.* where lord chief justice *Holt* says, "It is true, a horse cannot be distrained in a smith's shop, &c. but there is no such restriction, where the distress is for a personal duty." And he observed, that the duty, in that case, arose out of the goods laden to be exported: so that by their being laden, the duty commenced, and the ship became chargeable; and, *a fortiori*, any part of her. I take the meaning of what he there says of personal duties, to be applicable to the case of parliamentary duties alluded to in 3 *Salkeld*, and consequently to be agreeable to 3 *Salk.* 136. which says, it was adjudged "that this common law exemption of utensils, tools, instruments of husbandry, &c. from distress, holds only in distresses for rent arrear, amerciaments, &c. but doth not extend to cases where a distress is given in the nature of an execution, by any particular statute; (as for poor rates, &c.)" Therefore it is more analagous to an execution than to a distress at common law; and there, (in cases of execution) *averia carucæ* may be distrained; although there be other sufficient distresses.

And

And on this ground we are all of opinion, that there is no objection to the first distress, from the *averia caruce* being taken: for that they are distrainable under the 43 *Eliz.* and such like acts of parliament. Thus far, you see, relates only to the first distress. As to the second distress,—The first question relating to that, is, “whether this second distress can be at all justified, as it was a second distress taken under the same warrant, when enough might have been taken at first, if the distrainer had then thought proper.” Now, a man who has an entire duty, shall not split the entire sum, and distrain for part of it at one time, and for another part of it at another time; and so *toties quoties* for several times; for that is great oppression. And that is the case of *Wallis v. Savill et al'* in 2 *Lutw.* 1532. where the second distress was holden justifiable, because both distresses were taken for one and the same rent; and it was the lessor's folly that he had not taken a sufficient distress at first. But if a man seizes for the whole sum that is due to him, and only mistakes the value of the goods seized, (which may be of very uncertain, or even imaginary sale, as pictures, jewels, race-horses, &c.) there is no reason why he should not afterwards complete his execution by making a further seizure. And how can the officer who seizes judge of the real or perhaps imaginary value of the horses or goods seized? The value of them may be quite unknown to him, or may even depend upon whim and fancy. It is to the advantage of the defendant that this should be so: It is better for him that the officer should be at liberty to seize a second time, in case he makes an insufficient seizure the first time; or else it might induce him to a necessity of taking effects of a very great value at first; for if he is to be precluded from thus making up the deficiency, he will certainly take care not to take too little at first. Now, pictures, horses, jewels, books, and some other such effects, may be of so uncertain and even imaginary or fancied value, that it may be exceedingly uncertain how much money they may fetch when they come to be sold; so that the person seizing may not be at all able to judge how much they may produce upon Sale; and if he does not take the value of the whole at first, (out of tenderness and moderation perhaps) there is no reason why he should not complete it by a second seizure, provided it be for the same sum due. Therefore this first objection to the second distress fails. 3d question, The second objection to this second distress, is the third remaining question; viz. Its being excessive, and as such being a sufficient ground for an action of trespass. Now, as to this third question. “Whether the taking an excessive distress, is a sufficient ground to maintain an action of trespass.” Several authorities have been cited, to that “that an action of trespass will not lie for taking an excessive distress;” but “that it ought to be a particular action grounded upon the statute:” and particularly, one case, which is in 2 *Strange* 851. *Lynne v. Moody*, *M.* 3 *G.* 2. *B. R.* where it had been so adjudged in *C. B.* but the judgment of *C. B.* was there reversed; and it was said “that the remedy ought to be by special action” founded on the statute of *Marlbridge*. So that it has been suffi-

ciently established “ that a general action of trespass cannot be maintained for taking an excessive distress.” One case indeed was cited to the contrary, which was the case of *Moir v. Munday*, H. 28 G. 2. B. R. and that was an action of trespass; where 6 ounces of gold, and 100 ounces of silver were taken for 6 s. 8 d. which was holden to be an excessive distress; and judgment was given for the plaintiff. But that appeared upon the face of it, and upon the pleadings, to be excessive: and so the court expressly declared. And it was a distress of gold and silver; which are of a certain known value; and even the measure of the value of other things. And it was there holden, “ that in all other cases of goods or other things of arbitrary and uncertain value, it must be an action upon the statute.” But this (as I am told) was the distinction there taken: and that is therefore an exception (and was there considered as being so) from the general rule; and serves to confirm the rule itself. We are therefore all of us of opinion that there is no cause of action maintainable by the plaintiff in the present case, nor has he any right to recover against any of the defendants; and that the defendants be at liberty to enter a non-suit. The rule taken was, that the *posse* be delivered to, and judgment entered for the defendants.

End of the FIRST VOLUME.

## A D V E R T I S E M E N T.

**T**HE title page to the first volume of this work, with a collection of the rules that have been laid down in the several volumes of the Reports and by the most authentic Law Writers, for the true construction and interpretation of Acts of Parliament, illustrated by the cases on which those rules have been founded, and a complete index to this volume, will be published some time next month.









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Preamble reciting act 51 Hen. 3. and 8 Ann.—Recited act of 8 Ann. and other acts subsequent and relating thereto, continued to 29 September 1758; from which time so much of the act 51 Hen. 3. as relates to the assize of bread, and act 8 Ann. and other acts continuing, or amending the same, are repealed — — — — — 362, 363

General ordinance for setting an assize and price of bread—Assize to be regulated by the price the grain, meal, or flour bears in the market, and the profit to be allowed to the baker—  
Where an assize shall be set, no sort of bread (wheaten and household excepted) other than what is thereby allowed, is to be made for sale; under penalty of forfeiting not exceeding 40 s. nor less than 20 s.

Assize and price of bread to be set according to the two following tables, marked No. I. and No. II. — 364

Assize to be set in Averdupoize weight, and in the proportions directed by the tables, for the several sorts of bread—Return to be made weekly to the court of mayor and aldermen of London, by the meal weighers, of the prices which the several kinds of grain, meal, and flour, fit for bread, publicly sell for in the markets of the city: the prices to be entered by them on a certain day in a book to be kept in the town-clerk's office; and the assize and price of bread to be set the next day; and to take place according to order, and continue till a new assize be set, and to be published forthwith — 370, 371

Before any advance or reduction be made in the price of bread, the meal weighers are to leave at the bakers hall, a copy of the returns made that day, that the company may have time to object thereto before the assize is set — — — — — 371

The court of mayor and aldermen, and magistrates, &c. in other cities, towns, and boroughs, may, in like manner, cause returns to be made them of the prices which the several sorts of grain, meal, and flour, fit for bread, shall be publicly sold at in the markets within their jurisdictions; the prices to be entered — — — — —

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entered and certified in a proper book; and the assize and price of bread to be set within two days after; and to take place, and continue (not exceeding seven days) and to be published, as the court or magistrates shall direct 371, 372

Two or more justices within their jurisdictions, may set an assize of bread; and cause returns to be made by the clerks of the neighbouring markets, of the price at which grain, meal, and flour, shall be there sold; the return to be made on a certain day, and to be entered and signed in a book to be kept for that purpose; the assize and price of bread to be set within two days after, and to continue (not exceeding fourteen days) and to be commenced and published as shall be ordered — 372, 373

Bakers may see the returns, the day after the same shall be made, that they may have time to object to the advance or reduction to be made in the price of bread, before the assize be set—Baker not liable to pay fees on account of the assize of bread—Form of the returns to be made of the price of grain, meal, or flour — 373

Returns to be signed—Form of publication of the assize of bread — 374

Half peck, and quartern loaves, to weigh, and be sold, in due proportion to the peck loaf—Magistrates to direct how the assize of rye, barley, or mixed bread, when ordered to be made, shall be published—Where bread of a certain denomination and value shall be ordered, or allowed to be made, no bread of a different denomination is to be sold at the same time, under penalty of forfeiting not exceeding 40s. nor less than 20s. for such offence — 375

The justices at a general or quarter sessions, may fix the jurisdiction of any hundred or place within a certain district, so as the assize of bread set for the same may extend thereto — 375, 376

Entry to be made by every clerk of the market, &c. in proper books, of the return made by him, and of the rate the assize and price of bread shall be set at from time to time; the said books to be open to the inspection of any inhabitant—No alteration is to be made in assize of bread, unless the price of wheat, or other grain, shall vary 3 d. in the bushel from the last return. — 376

Any meal weigher, clerk of the market, &c. who shall neglect his duty, or make a false return, and any peace officer, who shall disobey the warrant of any magistrate, or justice, or otherwise neglect his duty, forfeit not exceeding 5 l. nor less than 20s. —Any buyer, seller, or dealer, who shall refuse to disclose to the meal weigher in London, or clerks of the markets, &c. in other places, the true prices the several sorts of grain, meal and flour, shall be bought or sold at in the public market, or shall give in a false or collusive price, forfeit not exceeding 10 l. nor less than 40 s. 376, 377

Where any false return shall be suspected to be made,

the court, magistrate, or justice, may, within three days, summon any buyer or seller, or other person likely to give information, and examine them upon oath, touching the prices of grain, meal and flour, within seven days before; and any person who shall not appear thereto, without just cause shewn, or shall refuse to give evidence, forfeits not exceeding 10 l. nor less than 40s.—And forswearing himself, incurs the penalties of perjury.—Party summoned, not obliged to travel above five miles from the place of his abode

377, 378  
When an order shall be made for making bread for sale of any other grain than wheat, or of mixed meal or flour, bakers to conform to such order, and make the bread of such weight and goodness, and at such price as shall be therein directed, on penalty of forfeiting not exceeding 5 l. nor less than 40s. 378, 379

The several sorts of bread made for sale are to be always well made, and, in their degrees, according to the goodness of the sorts of meal or flour the same ought to be made of, without any adulteration or mixture except the genuine meal or flour, salt, water, eggs, milk, yeast and barm, or such leaven as shall be occasionally allowed, upon penalty of the offender forfeiting (not being the servant or journeyman) not exceeding 10 l. nor less than 46 s.—or being committed, and kept to hard labour for any time not exceeding one month, nor less than ten days; and if the offender be a servant or journeyman, on penalty of his forfeiting not exceeding 5 l. nor less than 20 s. or being committed and kept to hard labour for any time not exceeding one month, nor less than ten days; and the magistrate may, out of the money of the forfeiture, publish in some news-paper the offender's name, place of abode, and offence—The penalty of adulterating corn, meal or flour, whether at the time of grinding, dressing, bolting, &c. or of selling the meal or flour of one sort of grain for another sort; or any thing mixed, which shall not be of the genuine meal or flour of the grain the same is sold for; is not to exceed 5 l. nor be less than 40 s.—Where bread shall be of a different mixture of corn than what it importeth to be of, or is allowed, or where the proportion of the mixture allowed of shall not be duly observed, or where any thing shall be sold as flour, which is not genuine, the offender is to forfeit not exceeding 5 l. nor less than 20 s. — 379, 380

Where bread shall be made under weight, the offender forfeits not exceeding 5 s. nor less than 1 s. for every ounce deficient; and if under an ounce, not exceeding 2 s. 6 d. nor less than 6 d.—provided such bread complained of, if in any city, town corporate, or borough, be weighed before the magistrate, within twenty four hours after the same shall be baked, sold, or exposed to sale; and if in any hundred

- hundred, riding or division, &c. within three days of the baking, or sale thereof; unless such deficiency arose from some unavoidable accident, or by contrivance or confederacy — 381
- All bread made for sale, is to be fairly marked; the wheaten bread with a large Roman W, and household with H, in order to ascertain under what denomination it was made, and ought to be weighed; under penalty not exceeding 20s. nor less than 5s. — Baker demanding or taking a higher price for bread, than what the same shall be set at by the assize; or refusing to sell to any person any of the sorts allowed or ordered to be made, when he shall have more than is necessary for the immediate use of his family or customers, forfeits not exceeding 40s. nor less than 10s. — 381, 382
- Bread of any inferior quality to wheaten, is not to be sold at a higher price than household bread is set at, on penalty of 20s. — Magistrates, justices, or peace officers, properly authorized, may enter in the day time the houses, shops, &c. of bakers, and search for, and weigh, the bread therein; and may seize such as shall be found wanting in goodness, due baking or weight, or not properly marked, or of any different sort than is allowed of, and dispose thereof at their discretion. 383
- Where any miller, mealman or baker, shall be suspected of adulterating meal or flour, the magistrate, &c. upon information made thereof on oath, may enter the premises of such suspected person himself, and make search, or may grant a search warrant to some peace officer, and such meal and flour as shall be deemed to have been adulterated, may be seized, together with the base mixtures and ingredients; and if seized by a peace officer, it is to be carried before a magistrate; if seized by the magistrate, or adjudged by him to be adulterated, he may dispose thereof as he thinks proper; and the miller, mealman or baker, in whose premises such mixture or ingredients shall be found, and adjudged to be intended to be used in adulterating, is to forfeit, upon conviction, not exceeding 10 l. nor less than 40s. unless it may be made appear, that the same were not lodged there with such intention, but for some other lawful purpose; and part of the forfeitures may be applied in publishing the offender's name, place of abode, and the offence 383, 384, 385
- Persons obstructing or opposing any search or seizure as aforesaid, are to forfeit not exceeding 5 l. nor less than 40s. — Any miller, mealman or baker, presuming to act as a magistrate or justice in the execution of this act, forfeits 50 l. to the informer — Method of recovery 385
- Where any baker shall, on complaint, make it appear, that the offence he was charged with, and paid the penalty of, was occasioned by the wilful default of his journeyman or servant, the magistrate shall issue his warrant for apprehending the party; and upon conviction of the offence, shall decree a reasonable recompence to be paid to the master; and on nonpayment thereof, shall commit the offender, to be kept to hard labour, for any time not exceeding one month, unless payment be sooner made — 385, 386
- All offences against this act may be heard and determined in a summary way, by magistrates within their respective jurisdictions. — Offenders may be summoned, and not appearing thereto, or offering a reasonable excuse, may be apprehended. — Matter of the complaint to be inquired into upon oath, and examination of witnesses; and the party to be convicted or acquitted thereupon. — The penalty on nonpayment thereof within 24 hours, is to be levied by distress and sale; and if the goods and chattels of the party shall be removed into another jurisdiction, the magistrate thereof is to back the warrant of distress; and the distress, if not redeemed within five days, is to be appraised and sold, and all charges, after settled by the magistrate, to be deducted thereout; and for want of distress the offender is to be committed for one month, unless payment be sooner made 386, 387, 388.
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- Witness to be examined on oath; and on refusal without just cause shewn, may be committed for 14 days, but not less than three. — Conviction to be drawn up in the following form. — No conviction, or other proceedings, may be removed by certiorari, &c. — Persons aggrieved by the judgment of any magistrate or justice, may appeal to the next general quarter-sessions, and execution of judgment is to be thereupon suspended. — Appellants to enter into recognizance, and give security to prosecute the appeal with effect, &c. — And the justices in their said sessions are to hear and determine the matter thereof, and award costs thereupon. — 388, 389
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- Seven days notice to be given to peace officers, before the issuing out any action against them. — Notice to contain the name and abode of the prosecutor, and his attorney, and cause of action. — Officer may thereupon make tender of amends; and plead the same, together with the general issue, &c. in bar of such action. — Defendant recovering, to be allowed his costs. — Plaintiff recovering 5 L

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- Distribution of the unappropriated penalties and forfeitures under the said act; viz. one moiety to the prosecutor, where the offender shall be convicted by oath, or confession; and the other moiety, with the penalties, on weighing, trying, or seizure of bread, by a magistrate, to such purposes as the magistrate shall think fit — 393
- Stat. 3 Geo. 3. c. 11. After 1 May 1763, no assized and priced bread to be made at the same time in the same place, upon penalty of forfeiting not exceeding 40s. nor less than 10s.—Justice, at any general, quarter, or petty session, may appoint which of the sorts of assize or priced loaves, and what other sorts of bread, and of what grain, shall be made for sale, they causing an entry to be made of such orders; which is to be free for inspection; and a copy thereof to be set up in some market, or other publick place, or published in the country news papers — 394, 395
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Officers scrupling oaths, &c. allowed to act by  
deputy—Persons in orders how exempted, &c.

752

Taking the oaths, &c. to be registered—Meeting  
door to be unlocked—Anabaptists—Teachers  
exempt from offices

753

Justice of peace may tender the oaths, &c.

Penalty for refusing—Quakers how exempted—

Declaration of fidelity—Profession

754

How purged after refusal of the oaths—Laws for  
divine service in force—Papists, &c. excepted

755

Disturbers of religious worship how punished—

Place for worship to be certified

756

Stat. 10 Ann. c. 2. If any dissenter, not in holy or-

ders, &c. who would have been entitled to the

benefit of that act, if he had taken the oaths, &c.

is or shall be prosecuted upon any penal statute, &c.

shall, during such prosecution, take the oaths, &c.

or, being a quaker, shall make the declaration, &c.

he shall be intitled to the benefit of the said act—

A dissenting teacher, qualified according to the said

act, may officiate in any other county than where

he was qualified—Such teacher to produce

a certificate, &c. of his having qualified himself,

&c. and shall, if required, make the declaration,

&c.

757

## Distress.

What it is

758

Stat. 2 Will. & Mar. sess. 1. c. 5. Goods distrained

for rent may be appraised and sold—Farther pro-

vided for by 8 Ann. c. 14.—Corn loose, &c.

may be detained and sold

758

Treble damages for pound breach—Double damages

and costs against wrongful distrainer

759

After the first of May 1710, no goods, &c. shall be

taken in execution, &c. unless the party before

removal of the goods, &c. pay the landlord the

rent due—Provided it amount to no more than one

year's rent—The sheriff, &c. to levy the rent

as well as the execution money—If after the said

first of May, and lessee, &c. shall fraudulently carry

his goods, &c. from the premises, &c. the lessor,

&c. may within five days after seize such goods,

&c. and sell the same as if they had been distrain-

ed on the premises—Provido, such lessor, &c.

shall not seize any goods, &c. which shall be bona

fide sold before such seizure

760

After the said first of May an action of debt may be

brought against tenant for life, for rent due upon a

lease for life, in the same manner as if it were due

on a lease for years—Distress liable to such sales,

and to be so distributed, as by the act 2 W. & M.

sess. 1. c. 5. is directed—Rent in arrear upon a

lease for life, &c. expired, may be distrained for  
after the determination of the said lease, in the same  
manner as if the lease had not been ended—

Distress to be within six months after the end of

the lease, and during the landlord's title and tenant's

possession—This act shall not hinder the queen,

&c. to levy, &c. any debts, fines, &c. due to the

crown

760, 761

Persons holding over lands, &c. after expiration of

leases, to pay double the yearly value—on half a

year's rent in arrear, landlord may enter, serving a

declaration of ejectment

762

When lessor in ejectment may recover judgment, &c.

—Not to bar the right of any mortgagee—

Lessees filing bill in equity, not to have an injunction

against proceeding at law, &c.

763

Tenant paying all rent with costs, proceeding to

cease—Method of recovering seck-rents, &c.

764

Chief leases may be renewed without surrendering all

the under leases—Not to extend to Scotland

765

Stat. 11 Geo. 2. c. 19. Landlords may distrain and

sell goods fraudulently carried off the premises,

unless sold to any person not privy to the fraud

—Penalty on the said fraud, or assisting thereto

—If the goods exceed not the value of 50l.

landlords to have recourse to two justices

766

Appeal from thence to the quarter-sessions—

The two justices order, on such appeal, not to be

executed—Landlords may break open houses

to seize goods fraudulently secured therein; and

may distrain stock of cattle on the premises, for

arrears of rent—Tenants to have notice of

the place where the distress is lodged—Distress

of corn, &c. to cease, if rent be paid before it

be cut

767, 768

Distresses may be secured and sold on the premises

769

Attornment of tenants void—Exception—

Against tenants secreting ejectments—Landlord

impowered to make himself defendant by joining

with the tenant, &c.

770

Rents how to be recovered where the demises are not

by deed—Rents recoverable from under-

tenant, where tenants for life die before the lease

is expired—Provision for landlords where

tenants desert the premises

771

Tenants may appeal from the justices—Tenants

holding premises; after the time they notify for

quitting them, to pay double rent for such time

Distress for rent not unlawful, &c. for any irregularity

in the disposition of them; nor tenants to re-

cover by action on tender of amends—In

actions against persons intitled to rents, the defend-

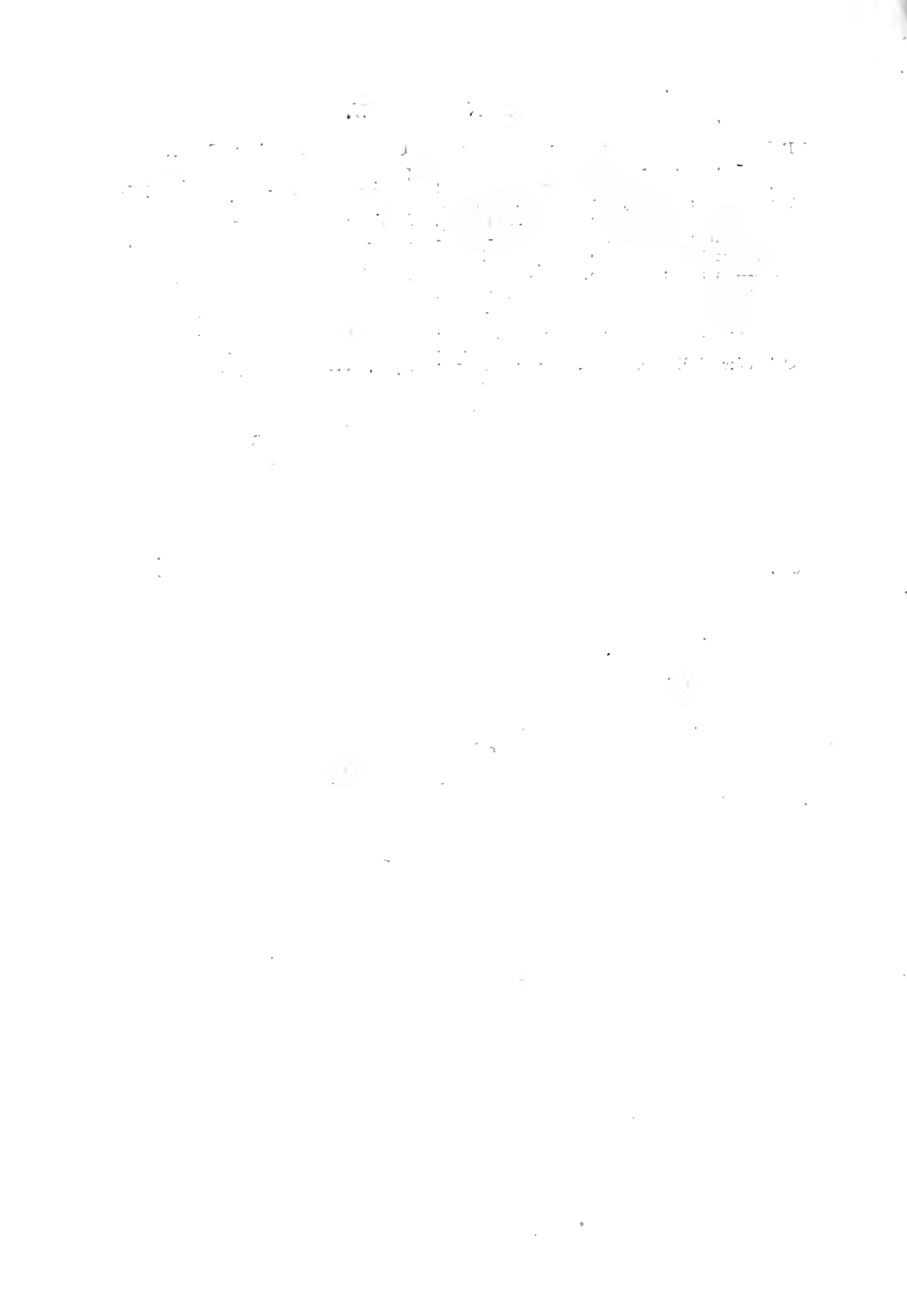
ant may plead the general issue, &c.

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| <p>Defendants in replevin to make conuzance that the plaintiff held the premisses at a certain rent, &amp;c.—<br/>         To prevent vexatious replevins ————— 774<br/>         Stat. 27 Geo. 2. c. 20. Justices to limit in their warrants of distress the time for sale of the distress, not less than four, nor more than eight days—————<br/>         Officer to deduct the charge of keeping and selling ————Overplus to be returned—————Provisions relating to tithes in 7 &amp; 8 Will. 3. c. 34. and 1 Geo. 1. c. 6. not altered ————— 775<br/>         Order of two justices on act 11 Geo. 2. c. 19. sect. 3. ibid.<br/>         Order of two justices on act 11 Geo. 2. c. 19. 777</p> | <p>Tenant in tail is within 11 Geo. 2. c. 19. sect. 15. 779<br/>         What things may be distrained for a poor rate, &amp;c. 780, &amp;c.<br/>         Distringas. See <i>Process</i>.<br/>         Divine service. See <i>Publick Worship</i>.<br/>         Dogs. See <i>Game</i>.<br/>         Doors breaking open. See <i>Arrest</i>.<br/>         Dower. See <i>Forfeiture</i>.<br/>         Drover of cattle. See <i>Badge</i>.<br/>         Drunkenness, See <i>Alchouses</i>.<br/>         Duelling. See <i>Homicide</i>.<br/>         Dyers. See <i>Woollen Manufacture</i>.</p> |
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